

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.:

AVIELLE HERNANDEZ, by her Guardian,	)
SHAYANNA JENKINS HERNANDEZ	)
Plaintiff	)
vs.	)
	)
NATIONAL FOOTBALL LEAGUE, THE	)
NATIONAL FOOTBALL LEAGUE	)
FOUNDATION, individually and as	)
successor in interest to NFL CHARITIES,	)
NFL PROPERTIES LLC, individually and	)
as successor in interest to NFL	)
PROPERTIES, INC., RIDDELL, INC.,	)
RIDDELL SPORTS GROUP, INC., ALL	)
AMERICAN SPORTS CORP., BRG SPORTS,	)
INC., f/k/a/ Easton-Bell Sports, Inc., BRG	)
SPORTS, LLC f/k/a Easton Bell Sports,	)
LLC, EB SPORTS CORP., and BRG SPORTS	)
HOLDING CORP. f/k/a RBG Holdings	)
Corp.,	)
Defendants	)
	)

**COMPLAINT AND JURY DEMAND**

**Introduction**

1. Avielle Hernandez, by and through her parent and Guardian, Shayanna Jenkins Hernandez ("Plaintiff"), brings this action to seek redress for the loss of parental consortium she has experienced based on the tortious conduct of Defendants that deprived her of the companionship and society of her father, Aaron Hernandez ("Aaron") during his lifetime.

2. At the time of his death, Aaron had the most severe case of Chronic Traumatic Encephalopathy (“CTE”) medically seen by the world renowned CTE Center at Boston University in a person of Arron’s young age of 28 years. Aaron had Stage III CTE usually seen in football players with a median age of death of 67 years. Aaron began playing youth football when he was approximately 5 years old. Aaron played youth football in Connecticut, middle school football, high school football, collegiate football at the University of Florida, and professional football in the National Football League (“NFL”) for the New England Patriots for three (3) seasons starting in 2010.

3. Football—not concussions—but football, is a potentially deadly and imminently dangerous delivery-mechanism for exposure to repeated blows to the head. A dose-response relationship has been observed between football (at *any* and all levels) and a pathologically unique chronic-brain-damage process of tau-protein tangles, known most often as CTE or (particularly in earlier peer-reviewed journal articles) *dementia puglistica*. As the Center for Disease Control (“CDC”) acknowledges, CTE’s “typical signs and symptoms” are presently recognized as “decline of recent memory and executive function, mood and behavioral disturbances (especially depression, impulsivity, aggressiveness, anger, irritability, suicidal behavior and eventual progression to dementia).” Defendant NFL has placed its logo on this CDC page, indicate its recognition of the same.

4. As set forth herein, the collective Defendants’ actual and/or constructive knowledge of CTE dates back *at least* to the 1960s; the general public’s knowledge of CTE does not. In this early time-period (the 1960s), football was examining the scope and nature of its brain-injury problem; the government had already studied (and Defendant NFL had knowledge of) CTE in a cohort of the concussed; substantial research progressed on CTE

and/or *dementia pugilistica*; and football teams were experimenting with soft-shell helmets to mitigate such injury.

5. As set forth herein, Defendants' long-running conspiracy has been designed to insulate them all (and other non-party co-conspirators) from litigation and financial responsibility. Aaron relied to his detriment on the representations made by the intentional-concealment-fraud and conspiracy; his decisions with respect to football would have been different, had there been no intentional concealment for football-exposure risk. In particular, Defendants NFL, NFL Properties, NFL Charities, and Riddell<sup>1</sup> are connected to the entirety of Aaron's years of exposure from youth football through his NFL years (e.g. repetitive blows to the head).

6. Defendants' multi-decade-long efforts to justify ignoring these warnings created a time-bomb in Aaron. Defendants did so to perpetuate the industry of football.

7. Aaron made a perfect target for Defendants' concealment-conspiracy of football's linkage to latent brain disease: Defendants NFL, NFL Charities, NFL Properties, and RIDDELL, funneled money to NFL Youth Football Fund and USA Football and/or (with respect to NFL, NFL Charities, and NFL Properties) exercised substantial control over these youth-marketing arms to market football and RIDDELL helmets as being safe for the general public and for young children (including Aaron, during his years of play.) Beginning in or around 1988, Defendants NFL and NFL Properties licensed the usage of

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<sup>1</sup> The corporate entities sued in this case have been held, over the fifty-plus-year time-span at issue in this case, by and through a number of corporate forms. They are referred to for simplicity as the "NFL"; "NFL P"; "NFL C"; and "RIDDELL." Nevertheless, it is Plaintiffs' understanding after significant good-faith research that the present defendants in this case constitute the liable present-day entities and successor-in-interest entities, or both. Plaintiffs reserve the right to clarify this issue upon receiving corporate charts in discovery.

football helmets from Defendant RIDDELL, blessing them as the NFL's official football helmet. In so doing, NFL and NFL Properties agreed with RIDDELL to provide football helmets "of the highest possible quality" and "sufficient to protect" the general public from "the risk of injury"; risks these Defendants and RIDDELL all knew and intentionally concealed through decades of affirmative acts. All Defendants participated in sham-research on protective equipment they knew to be inadequate, with respect to repetitive biomechanics of injury, neuropsychological testing, chronic brain damage, and protective equipment. Defendants NFL, NFL P, and NFL C funneled money to "charitable" organizations, industry-friendly researchers, and litigation consulting firms such as Exponent Failure Analysis Associates and Biokinetics (Canada), presenting litigation-avoidance materials as neutral research. RIDDELL also participated financially in this pseudo-research.

8. Beginning with the 1961-62 NFL Football season (if not before), Defendants NFL, NCAA, and RIDDELL were made aware of the football-helmet telemetry study of Dr. Stephen Reid, sponsored by the American Medical Association. The study provided helmet manufacturers including RIDDELL (entities in existence at the time) with actual knowledge of research on head-injury exposures (both clinical, "mild-traumatic brain injury" or "MTBI", and also subclinical MTBI exposures or subconcussive exposures) in NFL and NCAA football. Reid's first test-subject was a Detroit Lions' player at the 1961-62 NFL Pro Bowl. His telemetry study sought to detect brain damage in NFL and NCAA football players and to improve helmet efficacy; he would eventually acknowledge a "cumulative effect" of blows to the head in these studies.



9. In 1969, Defendant NFL sponsored a symposium with the U.S. Government on “Football Injuries”, which focused on football-related head injury and contained presentations from leaders in helmet-science research as well as on brain damage. By this early date, the NFL and RIDDELL (with whom at least some of this information was shared) gained knowledge—actual knowledge—of substantial risks to the brain from the game. They did not warn or share this information with the football community.

10. To the contrary, at this early time, Defendant NFL retained the Stanford Research Institute—an expert consulting firm which had performed some of the earliest research on smoking, finding no link between cigarettes and lung cancer—to continue studying injuries.

11. Upon information and belief, also beginning in this time, Defendant NFL regularly met with NCAA medical experts and shared information, seeking to disseminate self-serving science.

12. Also in 1969, Defendant RIDDELL, with support for the idea in Defendant NFL’s “Football Injuries” symposium, and alongside other protective-equipment manufacturers and the NCAA created the National Operating Committee on Standards in Athletic Equipment (“NOCSAE.”) NOCSAE’s helmet safety metrics, developed in the 1970s, focus on catastrophic failure (e.g., skull fracture and brain-bleed.) NOCSAE’s standard of “Gadd severity index” (“SI”) has remained in force as the *only* standard for four decades.

13. By the 1970s, clinically correlated symptoms of CTE that the NFL’s Mild Traumatic Brain Injury Committee (“MTBI Committee”) only acknowledged in boxers in the early 2000s, had already been observed in soccer players repeatedly heading soccer balls. Johnson, W., Skoreki, Reid, S.R., *The Gadd Severity Index and Measurements of Acceleration When Heading an Association Football*, IRCOBI Conference (Birmingham, England 1975).

This study was presented at the leading worldwide biomechanics conference in 1975, which attended by leading biomechanics experts who do and have worked with Defendants NFL, NFL Charities, and RIDDELL.

14. By the 1980s, the football-helmet industry nearly crumbled altogether due to death and paralysis verdicts; Defendant RIDDELL needed a partner, and Defendants NFL and NFL P recognized their sport's need for helmets. Further, upon information and belief, litigation involving the NFL's offshore captive insurance corporation, uncertainty over the NFL's relationship with its Member Club's players, and concern about a number of ALS-related deaths on one team motivated a more formal alliance between these two corporations. Thus, in or about 1988, Defendants agreed to a licensing deal: NFL Member Clubs received free equipment if 80% of players or more wore RIDDELL helmets; and RIDDELL and the NFL, through NFL P, became joint-venturers in protective-equipment fraud.

15. But by the 1990s, decision-making regarding football helmets from the 1960s and 1970s was returning to haunt Defendants and the general public. Defendants' collective choice to move toward hard-shell, motorcycle-style helmets—while highly effective against acute, immediately-catastrophic damage—was creating two long-term crises; a financial crisis for the football industry; and a pandemic for those playing the game at all levels of play. Injuries of many varieties were becoming worse, due to this decision. In particular, large swaths of the entire football-playing public began suffering from disabling neurocognitive and behavioral sequelae at astounding rates; liability concerns arose at all levels of play with respect to immediate and latent injuries from repetitive head trauma.

16. All Defendants could have disclosed the risks of the game and the limitations of protective equipment, certainly by the mid-1980s; but they opted instead for money and a long-term holding strategy.

17. Not long after Aaron's first year of NFL-sponsored youth football, Defendants NFL, NFL Charities, and RIDDELL undertook to create self-serving pseudo-science on repetitive brain injury. These Defendants collectively—not the NFL alone—funded, supervised, and engaged a committee on mild traumatic brain injuries (the aforementioned "MTBI Committee") that—in its own published words—with "neither the authority nor the inclination to impose outside medical decision-making on the medical staffs of the individual teams," performed flawed and self-serving research, at least some of which was intentionally based on incomplete data. These Defendants collectively—not the NFL alone—funded and advanced unethical scientific studies on helmets, injury tolerance to advance self-serving conclusions on testing methodologies, on brain injury, and on protective equipment—specifically football helmets and to a lesser extent mouthpieces.

18. Coinciding roughly with the time Aaron began playing youth football in Connecticut, the NFL and NFL C had funneled numerous "MTBI grant" awards to insulate itself exactly from problems like those complained of in this lawsuit; NFL P had long been licensing RIDDELL helmets, having agreed they were "sufficiently safe" to be the official helmet of the NFL; Defendants NFL and/or NFL P had been endeavoring by trying to "make soccer moms the coaches of tackle football" and to promote "heads up" tackle youth football, even with the knowledge that such a style of football makes no difference when it comes to preventing latent neurological disease; Defendant RIDDELL had financially sponsored a pendulum used in material and fraudulent concussion research with the NFL; Defendant

RIDDELL's key officers, including Mr. Thad Ide, among others attended MTBI Committee meetings, and Defendants NFL and NFL C also engaged numerous medical/scientific consultants to provide non-clinical research, relating in theory to the good-faith "study" of these issues, but in reality relating to the development of litigation-minded counter-science.

19. As set forth herein, Defendants NFL, NFL C, and RIDDELL, developed sham-science; Defendant NFL P branded (and legitimized) knowingly unsafe protective equipment for the purpose of mitigating against MTBI. These Defendants, in conjunction with the other entities described herein, developed, licensed, and marketed the game and protective equipment without disclosing the truth. Instead, the published counter-science and marketed ineffective harm-reduction technology in the form of football helmets incapable of protecting the players from subclinical and clinical traumas, which resulted in latent disease.

20. Defendants were negligent in sharing their scientific and non-clinical medical information with the general public; they undertook this concerted effort to keep the general public playing football without knowledge of its risks.

21. As alleged, Defendants breached their common-law and statutory duties to Aaron survived by his daughter Avielle, a young minor child who has lost parental consortium during Aaron's lifetime and now brings suit.

#### **Negligence Summary Table**

DEF (S)	DUTY OF CARE OWED OUTSIDE 29 U.S.C. § 185(a)
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NFL NFL C RIDDELL	Undertook, a duty to the general public, as stated in the second published paper in <i>Neurosurgery</i> <sup>2</sup> , with “neither the authority nor the inclination to impose outside medical decisionmaking on the medical staffs of the individual teams.”
NFL NFL C	Undertook a duty to the general public to engage in non-negligent scientific study, and to non-negligently fund and oversee 501(c)(3) NFL and its use of “MTBI Grants” as a means of funneling money toward <i>de facto</i> defense expert witnesses.
RIDDELL	Supervised and retained consultants and experts on the “MILD TRAUMATIC BRAIN INJURY COMMITTEE” in an expressly <b>non-clinical capacity</b> to facilitate their perpetuation of false science.
NFL P NFL	Negligently licensed protective equipment as the official helmet of the NFL with the knowledge these helmets could not protect against subclinical or MTBIs.  Engaged a joint employee, paid to ensure all such licensed equipment was safe, to prevent injury, knowing that this was a literal impossibility.
RIDDELL	Created multiple defective warning labels on helmets worn by Aaron Hernandez, none of which mention or warn of chronic brain damage, or CTE; only of “serious brain injury”, a medical term of art referring generally to so-called “open head injury”, <i>e.g.</i> , skull fracture and/or brain bleed.

### Rule 9(b) Summary Table of Defendants’ Fraudulent Conduct

WHO	WHAT	WHEN
NFL RIDDELL	Had knowledge of studies (including but not limited to Dr. S.E. Reid) on subclinical and clinical MTBI and intentionally concealed this information from the general public.	1962
	Had knowledge of helmet technology from Stanford Research Institute regarding soft-shell helmets, capable of better-mitigating against harms alleged in Complaint.	1975
	Supported the formation of and/or directly acted to form the National Operating Committee on Standards for Athletic Equipment (“NOCSAE”) as attempt to further buffer Defendants as to liability by putting these standards at an arms-length, and also an instrumentality aiding in the concealment of material information from the general public.	1969

<sup>2</sup> Pellman, EJ, Viano DC *et al*, Concussion in Professional Football. 16-part series and separate introduction funded by Defendants NFL, NFL C, RIDDELL and Honda R&D Co. Ltd., and federal grants.

NFL	Intentionally delayed implementation of a head injury surveillance system until after NOCSAE data better established and until after the NCAA had began such monitoring, so as to conceal prevalence information from the general public.	1972
NFL C	<p>Funnelled funds to NFL C and/or received supposedly charitable funds from NFL P and/or NFL, and/or clubs.</p> <p>Financially incentivized NOCSAE, a self-governing protective-equipment safety-standards creator, to conceal information from the general public. Specifically, 40-year-old, knowingly inapposite standards in place amidst actual knowledge safety standards had no use for concussion.</p>	
NFL NFL C	NFL funneled “charitable grant” money to NFL C, subsequently paid to Dr. Stanley Appel for a study on possible linkage between three 49ers players all afflicted by ALS from the same time. Researcher is an outspoken critic of CTE/ALS linkage and had contemporaneously published a study that smokers were less likely to get neurodegenerative disease, and als had agreed, according to memoranda, to research for the Council for Tobacco Research and/or for the Tobacco Institute.	1987
NFL P  RIDDELL	As of 1988 according to <i>Riddell v. Schutt</i> , 727 F. Supp. 1120 (N.D. Ill. 1989), agreed to make RIDDELL the NFL’s “Official Helmet”; agreed both parties had a duty to ensure equipment was sufficiently safe to prevent injury; agreed to jointly employ an individual responsible for equipment-safety.	1988
NFL NFL C RIDDELL	Participated in a long series of scientific researchers papers represented to be pro football’s good-faith attempt at MTBI research. Papers included a series of biomechanical papers and were followed by papers in the peer-review journal <i>Neurosurgery</i> . The <i>Neurosurgery</i> papers were discovered to contain overtly false data on concussion numbers in Pro Football.	1997- 2009
NFL NFL C	Funneled money to NFL Charities for “MTBI grants,” which would fund the sham- science geared toward litigation avoidance including giving direct financial incentives to NOCSAE and to scientists.	1997- 2011

NFL NFL P NFL C RIDDELL	Researched and developed the “Revolution” series helmet, holding it out as the first helmet designed with the intent of protecting against concussion, working with many independent-contractor psychologists and physicians from the University of Pittsburgh Medical Center. RIDDELL would make bold and unproven representations about this series, even over the privately-voiced concerns of MTBI Committee members.	2002-2006
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### **Parties**

22. Avielle Hernandez is a minor and the daughter of the deceased, Aaron Hernandez. Avielle resides with her mother, Shayanna Jenkins Hernandez, at 45 Eagle Peak Road, Pascoag, Rhode Island.

23. Plaintiff Shayanna Jenkins Hernandez (“Plaintiff”) brings this action on behalf of Avielle Hernandez as her parent and Guardian. Shayanna resides at 45 Eagle Peak Road, Pascoag, Rhode Island.

24. During Aaron’s professional football career, Aaron, Shayanna, and Avielle maintained a residence at 22 Ronald C. Meyer Drive, North Attleboro, Bristol County, Massachusetts.

### **NFL Defendants**

25. Defendant National Football League (“NFL”) is an unincorporated association consisting of separately owned and independently-operated professional football teams which operate out of many different cities and states within this country. The NFL acts as a

trade association for the benefit of its thirty-two independently operated teams and maintains its offices at 345 Park Avenue, New York, New York.

26. Defendant NFL is a wholly separate entity from: its “member-club” franchise-holders, or 32 NFL teams; Defendant NFL P; the NFL Foundation (as successor in interest to NFL Charities); NFL Ventures, LP; and the NFL Management Council.

27. Defendant NFL does not engage in labor negotiations of any sort whatsoever with NFL football players nor their union, the NFL Player’s Association (the “NFLPA”).

28. Defendant NFL C (the NFL Foundation f/k/a NFL Charities), individually and as successor-in-interest to NFL Charities, is a non-profit, 501(c)(3) entity headquartered at 345 Park Avenue, New York, New York.

29. Defendant NFL C is, as it once described itself, “a non-profit organization created by the member clubs of the National Football League to enable the clubs to collectively make grants to charitable and worthwhile causes on the national level.”

30. According to *NFL Properties, Inc. v. New Jersey Giants, Inc.*, 637 F.Supp. 507, 511 (D.N.J. 1986), NFL P is “the sole funding source for the trust that funds NFL Charities.” Upon information and belief, one notable exception to this was a donation of \$5,000.00 by Phillip Morris Companies, Inc. to NFL Charities, Inc. dated January 20, 1995.

31. Defendant NFL C does not engage in labor negotiations of any sort whatsoever with NFL football players nor their union, the NFL Players’ Association (the “NFLPA”).

32. Defendant NFL P (NFL Properties LLC, individually and as successor in interest to NFL Properties, Inc.) is a Delaware limited liability corporation headquartered in New York at the same address as Defendant NFL.



33. Defendant NFL P is the licensing arm of the NFL and claims to operate to ensure that the equipment and materials it licenses and approves are of the highest possible quality and sufficient to protect the players from the risk of injury.

34. Defendant NFL P does not engage in labor negotiations of any sort whatsoever with NFL football players nor their union, the NFLPA.

35. Over many decades, the NFL's influence has expanded through its use of the media.

36. The NFL has earned millions upon millions of dollars from its licensing arrangements, handled through NFL P, such as the RIDDELL licensing deal.

#### **RIDDELL Defendants**

37. RIDDELL was the Official Helmet of the NFL from 1989 through 2013. In 1989, NFL entered into a contract with RIDDELL. As the NFL's profits grew, so did those of the manufacturer and the marketer of the official helmet of the NFL.

38. RIDDELL, upon information and belief and as alleged throughout, does business in relevant form in Massachusetts, collectively through the entities sued: Riddell, Inc; Riddell Sports Group, Inc.; All American Sports Corporation; BRG Sports, Inc. f/k/a Easton-Bell Sports, Inc.; BRG Sports, LLC f/k/a Easton Bell Sports, LLC; EB Sports Corp.; and BRG Sports Holdings Corp. f/k/a RBG Holdings Corp.

39. RIDDELL has—since its predecessor entities began doing so decades ago—sold, marketed, designed, researched, reconditioned, distributed and labelled football helmets—specifically the majority of those worn by Aaron.

40. Defendant RIDDELL, INC.—*e.g.* “Riddell Inc.” and not all of the corporate entities—is a national corporation with its principal place of business in Illinois

41. Defendant RIDDELL, INC. is a wholly-owned subsidiary of RIDDELL SPORTS GROUP, INC. ("RSG"), a corporation duly organized and existing under the laws of the state of Delaware.

42. Defendant RSG is also parent to ALL AMERICAN SPORTS CORPORATION, d/b/a ALL-AMERICAN RIDDELL/ALL AMERICAN, a Delaware Corporation.

43. RSG and ALL AMERICAN, according to SEC filings by RIDDELL, INC., have directly "engaged in the business of the design, reconditioning and direct sale of football and baseball helmets, shoulder pads, practice wear, uniforms and other protective equipment to teams and educational institutions."

44. On April 27, 2001, RSG, formerly known as RIDDELL ACQUISITION SUB, INC. and as RIDDELL SPORTS INC., purchased ALL AMERICAN, Equilink Licensing Corporation, Ridmark Corp., RHC Licensing Corp., MacMark Corp., and Proacq. Corp., which collectively according to SEC documents, engaged in the business of design, reconditioning, and direct sale of football helmets and other protective equipment to teams and educational institutions.

45. RSG is therefore the proper successor in interest to the former entities alleged in Paragraph 45. In addition, RSG is successor in interest to R Holdings Corp. RAE Holdings, Inc., and Riddell Sporting Goods, Inc.

46. RSG directly and as successor-in-interest to the above-alleged predecessors, participated in the design, manufacture, sale, marketing, and distribution of football equipment, including RIDDELL helmets to the public, to Aaron's youth and school football teams, to the University of Florida where Aaron played in college, and to the NFL where Aaron played for the New England Patriots.

47. RSG also directly holds and/or has held and/or developed football-helmet patents and other intellectual property related to the technology employed in RIDDELL football helmets.
48. ALL AMERICAN employed sales representatives to market and sell RIDDELL football helmets and also reconditioned, sold, marketed, and/or distributed football helmets to the public and to the NFL in Illinois.
49. ALL AMERICAN has admitted in litigation that its employees also work for RIDDELL, INC.
50. ALL AMERICAN placed warning labels onto commercially reconditioned helmets.
51. ALL AMERICAN holds and/or has held and/or developed football-helmet patents and other intellectual property related to the technology used in RIDDELL-branded football helmets.
52. ALL AMERICAN works with RIDDELL, INC. and has clarified this in National Operating Committee on Standards for Athletic Equipment ("NOCSAE") newsletters, employing Mr. Don Gleisner, Mr. Daniel Kult, and Mr. Nelson Kraemer to have served in reconditioning, manufacturing, and technological capacities (respectively).
53. RSG is a wholly-owned subsidiary of BRG SPORTS, INC. ("BRG INC.").
54. BRG INC., formerly known as EASTON-BELL SPORTS, INC. is a Delaware Corporation with its principal place of business in California.
55. BRG INC., RSG, RIDDELL, INC., and RIDDELL/ALL AMERICAN all share the same president, Mr. Dan Arment.

56. Upon information and belief, RIDDELL sales employees, ostensibly performing duties for RSG, ALL AMERICAN, BRG Inc. and BRG LLC, and for Riddell, Inc. all use the same professional email address domain: "@riddellsales.com."

57. "Riddell Institutional", upon information and belief, is also a part of RIDDELL/ALL AMERICAN.

58. Upon information and belief, RIDDELL—as alleged and depicted here—jointly indemnifies all of these related entities:



## CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE OF THE POLICY(IES) UNDER WHICH THIS CERTIFICATE IS ISSUED. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S) AND THE CERTIFICATE HOLDER.	
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION is a term of the policy, certain policies may require an endorsement. A statement on this certificate holder in lieu of such endorsement(s).	
<b>PRODUCER</b> MARSH USA INC. 540 W. MADISON CHICAGO, IL 60681 Attn: Chicago.CertRequest@marsh.com   Fax: 212-948-0770	<b>CONTACT</b> NAME: PHONE: (A/C, No, Ext): E-MAIL: ADDRESS:
<b>RIDDELL</b>	<b>INSURER(S) AFFORDING COVERAGE</b>
<b>INSURED</b> BRG SPORTS, LLC INCLUDING RIDDELL AND ALL AMERICAN SPORTS CORPORATION AND THE ADDITIONAL SUBSIDIARIES & AFFILIATES AS SHOWN ON THE ATTACHED 9801 WEST HIGGINS ROAD, 8TH FLOOR ROSEMONT, IL 60018	<b>INSURER A:</b> Zurich American Insurance Company <b>INSURER B:</b> James River Insurance Company <b>INSURER C:</b> Navigators Insurance Company <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance**

**NAMED INSURED INCLUDES:**

4078624 CANADA INC. (CANADA)  
ALL AMERICAN SPORTS CORPORATION (DELAWARE)  
ALL AMERICAN SPORTS LTD. (CANADA)  
BELL CHINA INVESTMENTS, INC. (TEXAS)  
BELL POWERSPORTS, INC. (BRAND NAME ONLY)  
BELL RACING COMPANY (DELAWARE)  
BELL SPORTS CANADA, INC. (CANADA)  
BELL SPORTS CORP. (DELAWARE)  
BELL SPORTS FITNESS ACCESSORIES (BRAND NAME ONLY)  
BELL SPORTS, INC. (CALIFORNIA)  
BRG RUBBER PRODUCTS, LIMITED (HONG KONG)  
CDT NEVADA, INC. (NEVADA)  
EB SPORTS CORP. (DELAWARE)  
EQUILINK LICENSING, LLC (DELAWARE)  
GIRO SPORTS DESIGN INTERNATIONAL, INC. (BRAND NAME ONLY)  
MACGREGOR CORPORATION (DELAWARE)  
MACMARK CORPORATION (DELAWARE)  
RIDDELL SPORTS GROUP, INC. (DELAWARE)  
RIDDELL, INC. (ILLINOIS)  
RIDMARK CORPORATION (DELAWARE)  
BRG SPORTS, INC (DELAWARE)  
BRG SPORTS HOLDING CORP.  
BELL TECHNOLOGY ACQUISITION LLC (DELAWARE)  
BELL MOTOHELMETS S.R.L. (ITALY)

59. BRG INC. directly holds and develops football-helmet-related patents and other intellectual property used in RIDDELL-branded football helmets, and sold, manufactured, marketed, distributed, and reconditioned protective equipment nationwide.

60. BRG, INC., itself and through its predecessor in interest, Easton-Bell, directly marketed and licensed RIDDELL products nationwide.

61. BRG SPORTS, LLC ("BRG LLC") formerly known as Easton-Bell Sports, LLC also formerly known as Riddell Holdings, LLC, is a Delaware Corporation with principal place of business in New York. BRG LLC directly participates in the design, development, marketing and distribution of branded athletic equipment and accessories, including RIDDELL football helmets and football protective equipment.

62. In September 2004, Bell Sports merged with Riddell Sports to form Riddell Bell and in February 2006, Riddell Bell merged with Easton Sports to form Easton-Bell Sports. In April 2014, Easton-Bell Sports sold its baseball and softball business and was renamed BRG Sports.

63. BRG LLC itself and by and through its subsidiaries and affiliates, designs and tests RIDDELL equipment intended to be sold, marketed, distributed, purchased, manufactured and/or reconditioned (from use in) Connecticut, and/or to the NCAA and/or NFL teams on which Aaron played.

64. BRG LLC markets and licenses football helmets, holding itself out as “set[ting] the standard of design and protective excellence.”

65. BRG LLC makes and/or made strategic decisions for and with RIDDELL, INC., ALL AMERICAN, and RSG. It further participates in its subsidiaries’ operations in Illinois.

66. Defendant BRG SPORTS Inc. (“BRG SPORTS”), formerly known as Easton-Bell Sports, Inc., is a Delaware corporation with its principal place of business in California.

67. Defendant BRG SPORTS, INC., a corporate holding company of leading brands that design, develop and market innovative sports equipment, protective products, including helmets, apparel and related accessories, announced in 2016 that it had appointed Dan Arment to President and Chief Executive Officer of BRG Sports. In addition, Mr. Arment was promoted to CEO of RIDDELL, Inc. The offices of the President and CEO of BRG SPORTS and RIDDELL, Inc. are in Rosemont, Illinois.

68. Defendant BRG SPORTS develops football-helmet-related patents and other intellectual used in RIDDELL-branded football helmets, and sold, manufactured, marketed, distributed, and reconditioned in Illinois.

69. Defendant BRG SPORTS, by and through its predecessor in interest EASTON-BELL, directly marketed and licensed RIDDELL products.

70. Defendant BRG SPORTS HOLDINGS CORP. ("BRG HOLDINGS") formerly known as RBG HOLDINGS CORPORATION is a Delaware corporation with its principal place of business in Van Nuys, California that is doing business in Illinois.

71. BRG HOLDINGS has jointly purchased and contracted for joint indemnity and defense Commercial General Liability coverage with Aspen Specialty Insurance Company alongside all of these related RIDDELL DEFENDANTS, covering both non-products claims and also products liability claims.

72. BRG HOLDINGS holds and/or has held and/or developed football-helmet patents and other intellectual property related to the technology employed in RIDDELL-branded football helmets.

73. BRG HOLDINGS holds and/or held \$382,608,333.33 in secured notes, either due, extended, or past-due from its subsidiaries, including BRG LLC, doing business in Illinois.

74. EB SPORTS CORP. ("EB SPORTS") is a Delaware corporation with its principal place of business in Van Nuys, California and is a wholly owned subsidiary of BRG LLC.

75. EB SPORTS holds itself out in its media releases as a "designer, developer, and marketer" of football equipment products, including RIDDELL football helmets.

76. RIDDELL, INC., RSG, ALL AMERICAN, BRG SPORTS, INC., BRG INC., BRG LLC, BRG HOLDINGS, and EB SPORTS CORP., are collectively referred to herein as "RIDDELL" or "Riddell." Notwithstanding the legal relationship with their co-Defendants NFL, NFL C, and NFL P for the purposes of this action, these RIDDELL entities collectively hold the combination of actual and/or successor-in-interest entities that comprise the chain

responsible for RIDDELL's liabilities, as alleged in this action for the manufacturing, distributing, reconditioning, selling, marketing, and advertising of RIDDELL football helmets and for the furtherance of the false science as alleged herein, in conjunction with the co-conspirators alleged herein

### **Jurisdiction and Venue**

77. This Court has jurisdiction over the Defendants pursuant to General Laws c. 214, § 4 and c. 223A, § 3.

78. This Court has specific jurisdiction over all Defendants, who are alleged to have specifically harmed Aaron in Massachusetts, among other places.

79. Defendant NFL is a citizen of Massachusetts, as it is an unincorporated trade association and a citizen of each of its member Clubs, including the New England Patriots.

80. This Court alternatively also has general jurisdiction over all Defendants. Defendant NFL, as an unincorporated trade association, is considered at home and a citizen of each of its teams (the "Member Clubs"), and therefore is a citizen of Massachusetts, the principal place of business for the New England Patriots; Defendants NFL C and NFL P both continually and systematically engaged with Massachusetts through the acts alleged in the injurious joint venture, such that their conduct within the forum gives rise to jurisdiction; and Defendants RIDDELL, comprising the entities that operate this national corporation, have particularly engaged in systematic and continuous conduct in Massachusetts, including by designing, manufacturing, selling, distributing, and contracting to recondition RIDDELL football helmets, as worn by Aaron Hernandez during a significant portion of his football exposures.



81. Venue is proper pursuant to General Laws c. 223, § 2 because Plaintiff has brought a transitory action and the New England Patriots, the NFL team/Member Club for which Aaron played, has a usual place of business which is located at One Patriot Place, Foxborough, Massachusetts.

### **Equitable Estoppel–Time Based Defenses**

82. As specifically alleged, this action sets forth a fifty-plus-year conspiracy with particularity that lulled Aaron into inaction, and/or, that intentionally hid any otherwise-in-life-available causes of action for consortium from Aaron, as survived by Avielle Hernandez.

83. Consequently, Defendants are estopped from asserting time-based defenses because Plaintiff did not discover nor reasonably could have discovered, at any earlier time, that Aaron's manifested injuries (distinguished from on-field football-blows) had a causal connection to on-football blows, or to Defendants' fraud.

84. The causes of action alleged herein did not accrue until Aaron's daughter discovered the latent disease and/or diagnosed the terrible symptoms from which he had suffered without any knowledge of the cause.

85. Plaintiff had no realistic ability to discern that the symptoms witnessed in Aaron were linked to latent brain disease, and also to exposure to repetitive blows to the head suffered during football play until after Aaron's death. *See DeCarlo v. NFL*.

### **Estoppel–Section 301(a) of the Labor Management Relations Act**

86. Defendant NFL has had prior opportunity to litigate Section 301 preemption in the arbitral forum. *See Henderson v. Dolphins* (Jan. 1988 – Kasher) and *Sampson v. Oilers* (Jul. 1988 – Kagel).

87. Defendant NFL's prior opportunity resulted in a judgment on the merits in the arbitral forum in both *Henderson* and also in *Sampson*.

88. Defendant NFL was in privity with the National Football League Management Council in the prior actions.

89. Defendant NFL had a full and fair opportunity to litigate the jurisdictional issue of whether the tort claims should be arbitrated. The NFL prevailed when taking the position that state law tort claims, tort damages, and punitive damages could *not* be arbitrated

90. Accordingly, Defendant NFL is estopped from seeking to take the opposite position in this litigation.

### **General Allegations**

91. While the sport of football has been associated with certain risks of injury since its inception in the 1910s, a body of peer-reviewed scientific literature began to emerge associating football exposure with certain long-term neurocognitive and neurobehavioral dysfunction.

92. Specifically, studies of athletes in 1928 observed a link between repetitive exposures to head trauma, certain clinical manifestations, and a pathologically unique tangling of tau protein deposits on the brain. Pathologist Harrison Martland described the clinical spectrum of abnormalities ("cuckoo", "goofy" etc.) found in "almost 50 percent of fighters [boxers] . . . if" they receive sufficient dosing (the "Martland study"). Martland, H., *Punch Drunk*, Vol. 91(15), JAMA p. 1103-1107 (1928).

93. The Martland study was the first to *specifically* link blows to the head to the latent degenerative process the medical community now recognizes as CTE, first calling it "punch-

drunk” syndrome, or *dementia pugilistica*. Martland, H., *Punch Drunk*, Vol. 91(15), JAMA p. 1103-1107 (1928).

94. While the Martland study was the first to specifically link subclinical blows to latent disease, in 1874 German scientists noted “there is a cumulative effect in the experimental animal with more severe blows.” Hodgson, V.R., Gurdjian, E.S., and Thomas, L.M. Mechanical and Physiological Factors Related to Head Impact. (*Football Injuries Symposium*, NFL Commissioner’s Office and National Academy of Sciences, Papers Presented February 7 and 8, 1969) (citing Koch, W., and Filene, W. 1874).

95. In 1933, the NCAA published its *Medical Handbook for Schools and Colleges: Prevention and Care of Athletic Injuries*. This NCAA publication outlined a specific concussion protocol due to its recognition of neurocognitive and neurobehavioral sequelae linked to these repetitive clinical and/or subclinical exposures.

96. In 1937, the American Football Coaches Association published a warning regarding concussion.

97. In 1948, the New York State legislature instituted rules related to boxing, referred to by the state’s Medical Advisory Board, and later by sports neurologist Dr. Harry A. Kaplan as “traumatic encephalopathy.”

98. By at least 1952, the federal government was conducting CTE research. Specifically, prominent Neuropsychiatrist Dr. Edwin Weinstein was studying CTE in a closed head injury cohort of Korean war veterans at Walter Reed Hospital.

99. Weinstein’s study would receive legal recognition and validation in Federal District Court in 1966, when one of its participants robbed a bank and was tried in federal court in the 1960s. *See Nagell v. U.S.*, 392 Fed.2d 934, 937 (5th Cir. 1968) (CTE vitiated *mens rea*;

**“[h]ere the record is replete with expert testimony regarding ... ‘chronic traumatic encephalopathy’- a disease of the brain caused by trauma. Its symptoms: paranoia suicidal preoccupations, ‘confabulations’, tendency toward projection, impaired judgment, lack of contact with reality.”)**

100. At this same time, in 1952, The New England Journal of Medicine was recommending a three-strikes rule for concussive exposures and football, and JAMA had published additional findings on repetitive head trauma exposures in boxers. 246 NEJM at 554556 (1952); Busse, Ewald W. and Silverman, Albert J., *Electroencephalographic Changes in Professional Boxers*, Vol.149:17, Journal of the American Medical Association p. 1522-1525 (1952).

101. Also in the early 1950s, research on pyramidal syndrome in athletes who sustained repetitive blows to the head was first being described in literature.

102. Following these studies in 1952, numerous subsequent peer-reviewed papers would appear in journals such as *Journal of the American Medical Association*, *Neurosurgery*, *The New England Journal of Medicine*, *Lancet* and others, all strengthening the consensus that exposure to repetitive head trauma—in the forms of acute concussion, multiple concussions, and long-term exposures to subclinical blows—had adverse consequences on the brain.

103. By 1962, Drs. Serel and Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a “Parkinsonian” pattern of progressive decline. Serel M, Jaros O. The mechanisms of cerebral concussion in boxing and their consequences. *World Neurol* 1962;3:351–8.

104. By 1964, German researchers Haynal and Regli discovered an association between ALS and repetitive traumatic injury. By 1962, Drs. Serel and Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a “Parkinsonian” pattern of progressive decline. Haynal A, Regli, F. Zusammenhang der amyotrophischen lateralsclerose mitgehäufte elektrotraumata. *Confinia Neurologica* 1964;24:189–98.

105. Also in 1964, the Congress of Neurological Surgeons symposia series in Miami, Florida discussed 35 cases of CTE (“chronic residua of head trauma” related to concussion in athletes) presented by Dr. Harry A. Kaplan (of New York).

106. By 1964, Drs. Richard Schneider and Frederick Driss of the University of Michigan, who wrote considerably on football exposures, observed that concussion need not require a loss of consciousness. Schneider’s work at this time acknowledged that the prevailing terminology regarding concussions (and linking it to loss of consciousness) had been so confusing that British neurosurgeons recently have recommended abandoning its use. A definition developed by the 1964 Congress of Neurological Surgeons reads: ‘brain concussion – a clinical syndrome characterized by immediate and transient impairment of neuro-function, such as alteration of consciousness, disturbance of vision, equilibrium, etc., due to mechanical forces.

107. At this Miami symposia series, football neurosurgeon Dr. Schneider—cited in researcher’s work at Defendant NFL’s “Football Injuries” symposium—also presented on the significant number of professional football deaths related to the ineffectiveness of the current plastic helmet. These deaths and a spate of litigation, primarily due to acute, so-

called “serious head-injury”, or skullfracture / brain-bleed, threatened the helmet industry and therefore Defendants as a whole.

108. Thus, by the early 1960s, the Defendants were also on notice of effectively two problems: severe (acute) head trauma; and subclinical / clinical MTBIs causing latent or chronic disease processes, of which (images of modified RIDDELL helmet and facemask, below, for hall of fame player Willie Lanier) they were unequivocally already aware, yet powerless against:



109. The Defendants opted to improve helmet performance as to skull fracture and brain-bleed; this was the focus of litigation Defendants faced at this time (i.e., the 1960s and early 1970s.) Unfortunately, in doing so, Defendants created a game of hard-shell-helmeted football for the sport, which, like boxing, was fundamentally a game of subclinical blows on every play. Defendants had explored—and would continue to hear suggestions for exploring—the soft-shell helmet (*pictured above*).

110. The 1969 “Football Injuries” symposium actually specifically recognized this choice, and contained a presentation advising *against* creating helmets with these massively hard

shells (essentially crash helmets.) In fact, a presentation in this symposium also contained a recommendation to revise failure metrics to account for a series of lower-impact blows, in direct contrast to the prevailing major-high-speed motor-vehicle-accident crash standards.

111. Notwithstanding the softer-shell design's clear ability and/or potential to better absorb repetitive blows, aesthetic concerns trumped health concerns, and the designs never caught on. Nor were they advanced with support from Defendants. Defendants opted to focus on solving the other problem (acute traumatic head injury) while—in the face of recognition that this other (even more pervasive) problem existed—knowingly making it worse.

112. In further response, Defendant RIDDELL would acquire concussion and headinjury related patent technology also in this time-frame, including soft-shell technology, that it would—upon information and belief—continue attempting to develop.

113. Defendants, specifically Defendant NFL, first participated in these helmet efficacy studies that evaluated the ability to test for “brain damage” in professional football players at the conclusion of the 1961-62 NFL season, specifically in the NFL's Pro Bowl.

114. Dr. Reid furnished Defendants and all helmet manufacturers with regular progress reports and would detail several key findings over the coming 15-plus years: 1) radio-frequency evidence of brain damage; 2) evidence of brain damage in the absence of concussion; and 3) investigation of a “cumulative effect” from repeated blows to the head.

115. Also by the early 1960s, Defendants NFL and RIDDELL had been working with the automotive industry and biomechanics leaders, a great number of them from Wayne State University to serve as *de facto litigation-avoidance consultants*.

116. Defendants and the government would explore connections between subclinical blows and latent disease, gaining the actual knowledge that repetitive blows to the head in football caused long-term consequences, along with the knowledge that helmets were ineffective protection from the problem.

117. Defendant NFL, having grown its trade association to new heights after acquiring its sole competitor, engaged branches of the United States Military to meet in 1969, with luminaries from leading medical schools, the United States government, NFL clubs, football coaches—such as legendary Don Shula, NFL team trainers—such as Jim Van Deusen, eventual NOCSAE leaders, Wayne State University biomechanics experts, Harvard psychiatrists, neurologists, and leading sports medicine doctors to discuss the growing problem of “Football Injuries,” focusing largely on head injuries. At that time, Commissioner Rozelle’s office and the Government sponsored this “Football Injuries” symposium, where the focus was head injury. Included in 27 presentations were researchers from Wayne State University, notably biomechanics expert Dr. Voigt Hodgson and including:

- a. Dr. Lawrence M. Patrick – “Establishing Human Tolerance Levels for Injury”;
- b. Col. John P. Stapp – “Human Tolerance of Impact”;
- c. Drs. Voigt Hodgson, E.S. Gurdjian, and L.M. Thomas (Wayne State University Biomechanics) – “Mechanical and Human Factors Related to Head Impact”;
- d. Dr. Stephen E. Reid – “Radiotelemetry Study of Head Injuries in Football”;
- e. Dr. Howard Knuttgen – “Psychological Basis of Performance and Physical Condition Testing”;
- f. Dr. Thomas Holmes III – “Psychologic Screening”
- g. Dr. Chester M. Pierce – “Effect of Fatigue and Mental Stress on Performance”;
- h. Dr. Austin Henschel – “Effects of Heat on Performance”;



- i. Coach Don Shula and Trainer Eddie Block “Coaching, Game Skills, and Injury”;
- j. Dr. Allan Ryan – “The Role of Protective Equipment in Injury Control”;
- k. NY Jets Trainer Jack Rockwell-- –”The Relationship of Turf, Playing Conditions, and Equipment to Injuries”;
- l. Victor Frankel – “Biomechanical Analysis of Football Injuries”;
- and,
- m. Vergil N. Slee – “Computerization of Injury Data”.

118. Dr. Hodgson presented research on repetitive blows to the head using testing on the lightly anesthetized stump-tail monkey, finding that force: head-weight ratio predicted concussion.

119. Hodgson’s work focused on predictors of concussion in stump-tailed monkeys and dog brains. Hodgson’s generally Defendant-favorable work-product acknowledged what was a nearly century-old issue, according to papers he cited by German scientists: the effect of subclinical blows. Hodgson curiously stated from his own research that there did not appear to be an observable cumulative effect from subclinical blows in his research, but conceded that the “opposing [published] views are difficult to reconcile.”

120. Defendants continued to work with Dr. Hodgson and other Wayne State disciples, whose backgrounds in crashworthiness and automotive biomechanics led to helmet technology designs and safety standards premised on motorcycle racing helmets which are not intended to diffuse repetitive forces. Instead, as a result Defendants NFL and RIDDELL developed hard scale technology for the helmets rather than soft form, defeating the very purpose for the helmets on the football field.

121. At the time of the 1969 Football Injuries Symposia, all of the cadaver studies, concussion tolerance studies on dog brains, and the helmet telemetry studies had been either shared with Defendants (or simply sponsored by Defendants in the first place). The

presentations focused on the injuries suffered on the field and varied from Dr. Hodgson's presentation, described above, to Dr. Charles Pierce's presentation, who upon information and belief had been hired to produce findings that recognized the symptoms of irritability, drug abuse, emotional lability, and sleep problems in the NFL player cohort.

122. Dr. Pierce amazingly never even mentioned head injury as a possible comorbidity; instead, he blamed these symptoms on football players wives' treatment of their husbands but did not address the latent sequelae of brain injuries suffered by repetitive head trauma. Charles M. Pierce, *Effect of Fatigue and Mental Stress on Football Performance*, National Academy of Sciences, *Football Injuries: Papers Presented at a Workshop*, 207-09 (1970).

123. Presentations from former Jets trainer Jack Rockwell and Jets team physician James Nicholas illustrated the earliest examples of reporting studies with flawed data. Trainer Rockwell entirely buried unfavorable data regarding injuries on turf surfaces by calling them "too inconclusive"; he referred to equipment studies as "difficult" to assess; instead, his lone recommendation for change pointed to the one thing that was beyond man-made control- the weather.

124. Dr. Nicholas relied on data, stating there were only seven total concussions in the nine years of reporting data in his study.

125. Dr. Allan Ryan, from University of Wisconsin, presented on "The Role of Protective Equipment in Injury Control," comparing football players to dinosaurs (with bodies covered by armor yet failure to survive). In direct contravention to what had been presented to the general public by Dr. Schneider in 1964, Dr. Ryan gushed about plastic helmets, reporting that: "[w]e have a helmet that provides extraordinarily good protection compared with models [from the 1940s and 1950s but] ... there are many boys who []

suffer brain damage.” Dr. Ryan, however, acknowledged some poor outcomes (deaths, brain injuries, etc.) given that the advent of this helmet had led to its unintended and inappropriate use by players. In other words, at this 1969 NFL symposia, the groundwork for a defense was being laid: any head injuries were the fault of the players themselves (or their wives).

126. Dr. Ryan made a series of key recommendations, the most important of which was to establish (what would ultimately become) the NOCSAE. And, within months of this 1969 symposia series, following recommendations made at the meetings, the National Operating Committee on Standards for Athletic Equipment (“NOCSAE”) was formed. NOCSAE is a non-profit organization intended to self-regulate football helmet safety standards; however the safety standards introduced in 1972 remain materially unchanged through the present day.

127. Thereafter, Defendants established the National Operating Committee on Standards for Equipment Safety (“NOCSAE”). Its purported efforts included the development of performance standards for football helmets as well as research to better understand the mechanisms and tolerance of head and neck injuries and the design and structure of football helmets.

128. In reality, NOCSAE has advanced a constituency-serving agenda, specifically that of the protective equipment industry that controls its funding and that has traditionally controlled the votes of its board of directors, and equally important, those athletic organizations dependent upon these protective equipment manufacturers for equipment certification seals.

129. NOCSAE was, and remains, self-regulating, and establishes voluntary equipment safety standards, with manufacturers testing their own equipment and then reporting

results to NOCSAE to receive their certification seal. Upon information and belief, doing so serves multiple purposes: a) it buttresses a built-in defense to liability on the part of a manufacturer; b) it attempts to create a built-in defense to liability on the part of a league such as Defendant NFL or sporting organization for allowing the usage of a specific brand or product; and, c) it serves as a preemptive strike against governmental regulation.

#### **NOCSAE Acts on Behalf of Helmet Manufacturers and the NFL**

130. Indeed, despite its government-agency-styled name, NOCSAE receives no oversight from any bureaucratic or other independent federal or state-sanctioned agency, such as the Federal Trade Commission, Consumer Product Safety Commission, or the Occupational Safety and Health Administration. Instead, NOCSAE has strictly voluntary standards for compliance, available for adoption by any equipment manufacturer, user group, or athletic regulatory body.

131. NOCSAE first began research efforts regarding head protection equipment in or about 1969, establishing standards by the early 1970s that remain materially unchanged and in place to this very day.

132. NOCSAE's own newsletters reveal that "the NOCSAE standard was not created as a concussion prevention standard." Its only standard prevents skull fracture and brain bleed—or "open" head injuries—injuries require far greater impact to the skull than concussive forces or MTBI.

133. NOCSAE's stated goal has been to improve athletic equipment, and to reduce injuries through creating standards for athletic equipment.

134. NOCSAE has received significant grant funding from helmet manufacturers, Defendant NFL directly, Defendant NFL C directly, and Defendant NFL P, through NFL P's funding of these other two Defendants.

135. Specifically, NOCSAE received NFL Charities grants, and "MTBI grant" money amounting to a substantial portion of its overall grant money. In 1997 alone, NOCSAE received a \$50,000 grant to assist in the performance and underwriting of further research in the areas of football helmet protection and helmet safety performance.

136. NOCSAE also has—during significant portions of the material times referenced in this Complaint—had multiple members of Defendant NFL's MTBI Committee (Dr. John Powell and Dr. David Viano) to oversee its grant dissemination. Both Dr. Powell and Dr. Viano, upon information and belief, have received financial compensation from RIDDELL and from Defendant NFL and/or Defendant NFL P and/or Defendant NFL C.

137. In 1999, NOCSAE-funded-research began investigating brain injury, specifically MTBI, subclinical trauma, and return-to-play ("RTP") protocols and procedures. All of this work was non-clinical research.

138. NOCSAE has in turn paid for research to the Southern Impact Research Center (the "SIRC"), which is owned, at least in part, and operated by frequent RIDDELL/MTBI Committee expert consultant R. David Halstead; both entities have directly worked with Halstead.

139. In 2000, NOCSAE announced that it had formally contracted with SIRC and Halstead to provide its licensees with resources for testing, responding to inquiries, equipment set-up, and update training.

140. In its 2003 Newsletter, NOCSAE announced that “[w]e are working on the details of a new cooperation with the National Football League for research into football concussions and related standards.”

141. One year later, in another NOCSAE Newsletter in the Spring of 2004, NOCSAE ostensibly validated the findings of the conspirators’ sham committee: “[t]he NFL’s Committee on Mild Traumatic Brain Injuries recently published its results assessing the impact type and injury biomechanics of concussions in professional football ... The committee claims that the variance of concussive impact data by location could form the basis for future performance standards ... Concussions were primarily related to translational acceleration and consistently detectable by conventional measures of head injury risk ... A strong correlation existed between rotational and translational acceleration leading the committee to conclude that translational values remain sufficient for detection and standards.”

142. In the same Spring 2004 Newsletter, the delay in updating helmet standards was again addressed:

Q: Is NOCSAE on the verge of introducing new standards that may make obsolete certain products now in the field?

A: No. However NOCSAE is always looking for ways to improve athlete safety and routinely reviews it’s standards and technology with emerging data on injuries, possible interventions and preventions that may be implemented through standards development. While NOCSAE is working diligently with the scientific community on new test methods and standards, reports of wide sweeping changes in the near future are incorrect. As the technology to measure, address and set threshold values for less serious head injury evolve NOCSAE expects to be among the leaders in implementation, but as of this writing much remains to be done before new methods and performance requirements can be incorporated with any assurance that the result will be reduced injuries.

143. Notwithstanding NOCSAE’s research grants to outside sources, the scientific consensus, and representations like its statement regarding additional research with the

NFL, NOCSAE has not instituted more modernized helmet certification guidelines. It finally moved the April 2004 Football Helmet Test Methodology (ND081-04m04) into “proposed” status as of January of 2006, referring all questions to SIRC head David Halstead.

144. Upon information and belief, NOCSAE Football Helmet Test Methodology remains unchanged today.

145. NOCSAE’s certification testing methodology and systemic bias belie its independence and value as providing any services in the way of safety or indicia of reliability to its end-users (those who wear helmets and other equipment).

146. Indeed, as the FAQ section of NOCSAE.org said until at least 2000, the NOCSAE certification does not immunize a breach of duty, but instead indicates an undertaking to safeguard helmet users “by purchasing helmets which meet the best available helmet standards.”

147. Through 2009, NOCSAE’s Newsletter notes that “NOCSAE cannot answer [] and probably should not” answer the question “which helmets provide the best protection from concussion?”

148. The NOCSAE Newsletter once again completes the circle, by saying “the conclusion as to which helmet does a better job in reducing or preventing concussions is better addressed by the manufacturers.” In fact, NOCSAE prohibits licensees from even releasing the qualitative data point on certification that would indicate relative quality.

149. Stated differently, Defendants have agreed to be bound by this third-party rule prohibiting the public release of their qualitative data points on certification.

150. End-users (e.g. those who wear the helmets) themselves and intermediaries are deprived of the ability to understand their relative risks so long as they wear helmets made by makers abiding by these NOCSAE rules.

151. Upon information and belief, the NOCSAE standards have remained unchanged because the Defendants have desired this.

152. Football helmet manufacturers and their lobbies having substantial voting power on the NOCSAE Board of Directors, and have financially incentivized NOCSAE accordingly.

153. The divergence between NOCSAE's stated mission and underlying agendas appears clearest in the composition of those NOCSAE Board members and top advisors with ties to the protective equipment industry.

154. RIDDELL/All-American President Don Gleisner served on the Board during the time-period of the NFL's MTBI Committee's creation while working in the Chicago, Illinois headquarters.

155. At all material times, including, but not limited to, the time period of the MTBI Committee's creation, at least two board votes would be controlled by the Sporting Goods Manufacturing Association, now known as the Sports & Fitness Industry Association.

156. At all material times, including, but not limited to, the time period of the MTBI Committee's creation, at least one board vote would be controlled by a representative from the American Football Coaches Association or the College Football Association.

157. At all material times, including, but not limited to, the time period of the MTBI Committee's creation, at least two board votes would be controlled by the Athletic Equipment Managers Association.



158. At all times material, including, but not limited to, the time period of the MTBI Committee's creation, NOCSAE's research director was J.J. "Trey" Crisco, whose research on helmet telemetry for Simbex, LLC was purchased and acquired by RIDDELL.

159. At all times material, including, but not limited to, the time period of Defendant NFL's MTBI Committee's creation, the NOCSAE's technical advisor has been and remains frequent RIDDELL/NFL expert witness and paid consultant R. David Halstead.

160. The conspiratorial nature of the relationship between Defendants RIDDELL Defendants NFL, and NOCSAE was substantiated in the deposition testimony of RIDDELL's paid expert Halstead, who stated that "the NFL and NOCSAE try pretty hard to work together," which Halstead explained in deposition while testifying that "I work with the NFL Committee on Mild Traumatic Brain Injury ... typically through NOCSAE."

161. In 1969 co-conspirator NFL, concerned about its own liability, commissioned the Stanford Research Institute ("SRI") to study concussions and other injuries, as sustained on grass versus Astroturf. *See Cooper Rollow, NFL Takes Steps To Curb Injuries*, Chicago Tribune, June 28, 1973, Sec. 3 at 2.

162. The NFLPA would expose what it discovered of this largely concealed study as self-serving and false. *See Garvey, Study Totally Inadequate Players Group Criticizes Turf Report*, (AP) June 29, 1973. It would later be discovered by Sports Illustrated that the Stanford Research Institute study found 9.4% of injuries had been caused by helmets. Underwood, John, *An Unfolding Tragedy*, Sports Illustrated, August 14, 1978.

163. Defendant NFL never acted on the issues of mild traumatic brain-injury ("MTBI"), concussive exposure, or simply repeated blows to the head (subclinical blows or exposure) based on the study's results. This was true, even with what was nearly a half-century of

scholarship and research having been conducted prior to this time period, both on repetitive blows to the brain, and also on football helmet technology.

164. By the late 1970s, only three helmet manufacturers remained in business, with the Defendants' then-president openly worrying that litigation could end football.

165. In or around 1982, the RIDDELL Defendants' president publicly proposed the formation of a player compensation pool. He called this the "Sports Rehabilitation Foundation", proposing it be funded by the National Football League, to provide support payments to high school, collegiate, and professional football players permanently injured during football play. In return for this compensation, players would waive their rights to sue helmet manufacturers. *See Appelson, G., Helmet Maker Proposes Football Injury Pool*, 68 A.B.A.J. 136 (1982). An NFL committee was tasked with studying financing for the proposed pool, including ticket surcharges, network contributions, or charges to the players. *Id.*

166. By 1983, upon information and belief, at least some helmet's warnings were amended to state the following:

Do Not Use This Helmet to Butt, Ram, or Spear an Opposing Player. This Is In Violation Of Football Rules And Can Result In Severe Head, Brain, or Neck Injury, Paralysis Or Death to You and Possible Injury to Your Opponent. There Is A Risk These Injuries May Occur As A Result Of Accidental Contact Without Intent To Butt, Ram, Or Spear. NO HELMET CAN PREVENT SUCH INJURIES."

167. In permitting these NOCSAE guidelines, the Defendants were only warning against TBI and/or skull fracture, neither against MTBI, nor against CTE, nor against related repetitive-exposure injuries.

168. Rather than seek to *solve* football's safety problems for its players, Defendants, leaders of the football community in revenue and stature, opted for a self-serving,

deliberate, and forward-thinking approach: enlisting the help of other corporate entities and individuals.

### **Defendants NFL, NFL P and RIDDELL Formally Join Forces**

169. In or before 1989 (as some dates suggest April of 1988 and other research points to 1989), RIDDELL agreed to a joint-venture with NFL P regarding football helmets that would preserve RIDDELL's financial health and where RIDDELL would provide assistance to Defendants NFL and NFL P in the form of assistance with liability-limiting junk-science and propaganda, all minimizing the risks of repetitive head injury and concealing the risks of CTE from those playing the game.

170. The workers-compensation-like scheme proposed by RIDDELL did not materialize, its proposal coinciding with a time during which the NFL co-conspirators faced a series of unique, first-of-their-kind challenges: significant forced changes to the insuring and re-insuring of its workers' compensation scheme, after the winding up and eventual liquidation of an underfunded, off-shore, captive mutual insurance carrier (NFL Insurance Limited- see *The Travellers Ins. Co. v. Chicago Bears Football Club, Inc.*) left open questions on work-related injury liabilities; labor unrest with the NFLPA and the absence of a collective bargaining agreement between ownership and players; and, a bizarre cluster of football players, Matt Hazeltine, Gary Lewis, and Bobby Waters, all diagnosed in the same window of time (the early 1980s) with Amyotrophic Lateral Sclerosis ("ALS" or "Lou Gerhig's Disease"), all of whom played together on the San Francisco 49ers, and all of whom had died by 1987.

171. In this 1980s time-period, through Defendant NFL C, at least one neurologist, Dr. Stanley Appel, MD, received a sum, believed to be \$125,000, to research linkage between the three incidences of ALS (or CTEM) on the same NFL team.

172. Upon information and belief, Dr. Appel received this grant money *not* to undertake good-faith scientific study, but instead, to support Defendants' self-serving and predetermined conclusion that no such link existed.

173. Dr. Appel had, according to tobacco industry memoranda, agreed to perform favorable tobacco-industry research during the same time-period as his NFL research. He has since become an outspoken critic of the generally accepted scientific connection between trauma and ALS-like symptoms.

174. Beginning *at latest* by the spring of 1990, Defendants engaged in the multi-decade conspiracy to limit their own tort liability by concealing and/or misrepresenting and/or omitting information about head trauma and football from the football community; along with its co-conspirators, including but not limited to: NFL, NFL Properties, Inc., NFL Properties, LLC, NFL Charities, the RIDDELL Defendants agreed to engage in a long-term plan to conceal material information about football's link to CTE and other neurological/neurobehavioral conditions, while doing so in the name of solving safety problems for its game's players.

175. Upon information and belief, on April 11, 1988, RIDDELL and co-conspirator NFL Properties, Inc. ("NFL P"), the licensing arm of the NFL and successor-in-interest to NFL Properties LLC, embarked on the aforementioned joint venture. RIDDELL agreed to serve as exclusive helmet provider to the NFL co-conspirators.

176. In return for providing free helmets, pads and jerseys to each NFL team, RIDDELL would receive the exclusive right to display its logo during NFL games on the helmets of those players who choose to wear the RIDDELL brand. The tradename—‘RIDDELL’—can be seen in the front of the helmet on the ‘nose bumper’, on the side of the helmet on the chin strap, and in the back of the helmet at the helmet’s base. While NFL players remain free to wear the helmet of their choice, the Agreement stipulates that manufacturers’ logos other than RIDDELL’s “must remain covered during league play ... in order for an NFL [Team] to be eligible for all the free and discounted equipment from RIDDELL, at least 90% of its players must use RIDDELL helmets.”

177. So powerful was this agreement that RIDDELL’s chief competitor made it the subject of antitrust litigation. *Schutt Athlet. Sales Co. v. RIDDELL, INC.*, 727 F. Supp. 1220, 1222 (N.D. Ill. 1989).

178. Former RIDDELL president J.C. Wingo would state in 2013 that the purpose of the RIDDELL-NFL exclusivity deal was “to ensure a viable survivor in the helmet industry.” See Helyar, John “Helmets Preventing Concussion Seen Quashed By NFL-RIDDELL”, Mar. 18, 2013, Bloomberg Business.

179. As further consideration for RIDDELL’s exclusivity agreement with the NFL, RIDDELL was permitted to sell NFL-branded mini replica helmets as souvenir items, upon information and belief, a multi-million-dollar market over which the NFL had now given RIDDELL an exclusive market-share, in exchange for RIDDELL’s participation in its conspiracy.

#### **Defendants’ MTBI Committee is Planned and Formed**

180. By the early 1990s, the emerging scientific consensus forced Defendants to take a different approach to the growing problem of MTBI caused acute injury and latent disease in existing and former football players, respectively.

181. On October 20, 1992 Commissioner Paul Tagliabue received a hand-written letter from Arthur J. Stevens, General Counsel for Lorillard Tobacco company, Tobacco Institute Executive Committee member, and head of the industry's "committee of counsel." The letter copied Lorillard co-owners then-New York Giants co-owner P.R. Tisch and Andrew Tisch. It advised on updates regarding the crime-fraud exception in the context of exposure-injury litigation.

182. Upon information and belief, it was at this time that Defendant NFL had begun recognizing large numbers of its players were developing chronic brain damage from football, and paying disability money and workers' compensation money for this. In addition, the Giants had recently borne witness to a high-profile concussion, when, on September 7, 1992, 49ers quarterback Steve Young was knocked out of the Giants game due to a concussion.

183. Covington and Burling litigator Paul Tagliabue, recently named NFL Commissioner, publicly dismissed the league's concussion issues as "pack journalism", saying that the NFL experienced "one concussion every three or four games," though privately, he had begun implementing a long-term, litigation-defense strategy.

184. In this way, the MTBI Committee's creation served to: a) drag the fact-finding process out; b) cast doubt on football-related causation altogether by blaming co-morbidities; c) attempt to distinguish NFL-causation from pre-NFL causation; and d) conduct bad-faith harm-reduction research in the form of exploring improvements to

equipment changes and game conditions that conspirators, committee members, behind-the-scenes scientists and attorneys knew would not actually result in material health benefits for players, but did create a false sense of security in Aaron and others.

185. The original roster comprising the MTBI Committee, purportedly independent and composed to research the issues of concussion in football in good-faith, revealed the Committee to be the opposite: the Committee was in fact a biased and/or ill-qualified who's-who list of NFL insiders and professional expert witnesses.

186. The original Committee contained Elliott Pellman (Jets doctor); Andy Tucker (Browns doctor); Jay Brunetti (Redskins equipment manager); Ira Casson (New York neurologist / defense expert witness); Doug Robertson (Colts doctor); Mark Lovell (Steelers neuropsychologist); Henry Feuer (Colts doctor); Albert Burstein (RIDDELL affiliate - biomechanics); John Powell (NFL injury database proprietor); Joseph Waeckerle (Chiefs doctor); Ronnie Barnes (Giants trainer); Bob Reese (Jets trainer); Dean Blandino (NFL referee); and former Tobacco-Institute-counsel-turned-NFL-attorney Dorothy Mitchell.

187. In addition, the RIDDELL Defendants' representatives also attended meetings of the MTBI Committee and received communications regarding the same.

188. The MTBI Committee first met collectively in February of 1995 in Indianapolis, where they arrived at a consensus definition for "concussion."

189. Committee Member Albert Burstein had worked largely as a consultant for numerous pharmaceutical and biomedical corporations prior to his working on the NFL's MTBI Committee. Most importantly, Burstein worked regularly as a defense expert witness

for RIDDELL on numerous personal injury/product liability litigation matters during his time as a member of the purportedly “independent” MTBI Committee.

190. In just one of the numerous instances that Committee Member Burstein provided paid-for trial testimony on RIDDELL’s behalf while serving on the conspirators’ sham committee, in *Arnold v. RIDDELL, INC.*, 882 F.Supp. 979 (D. Kan. 1995), Burstein opined that the cause of a football player’s paralysis would have remained unchanged regardless of the specific helmet type he had worn.

191. MTBI Committee Chair Dr. Elliot Pellman and the other Committee Members agreed to drive out any potentially successful competitor products to RIDDELL products, even ones that were scientifically tested and believed to provide players with substantial benefit.

192. NFL lead spokesman Greg Aiello has acknowledged that Commissioner Paul Tagliabue received personal medical care on an ongoing basis from Dr. Pellman over the course of a decade.

193. Committee Member David Viano, PhD, brought in purportedly for his background on biomechanics and helmet safety, was primarily an employee of General Motors at the time of his appointment and not a professor at Wayne State University as represented.

194. Committee Member Dr. Viano left GM in 2002, and has received the bulk of his income over the course of his life as a defense-side expert witness in product-liability actions, primarily testifying on issues of crashworthiness in the automotive industry; Committee Member Dr. Viano and his shell corporation received an amount believed to be approximately \$200,000 per year from NFL Charities in “MTBI Grant” money; Michigan State University’s department of kinesiology, where MTBI Committee member John Powell, PhD (athletic trainer) was employed, received upwards of \$50,000 per year in MTBI grant



money; University of Pittsburgh Medical Center, where MTBI Committee member and Pittsburgh Steelers' neurologist Dr. Joseph Maroon practiced, received upwards of \$50,000 per year MTBI grant money.

195. Committee Member Mark Lovell, PhD, a business partner of Steelers team neurologist and fellow MTBI Committee-member Joseph Maroon, M.D had a significant corporate interest in selling his controversial product "imPACT! Sideline concussion assessment tool" to the NFL.

196. Defendants' MTBI Committee sponsored neuropsychological testing research at Allegheny College in the 1990s and with witness consultants at Exponent Failure Analysis.

197. Defendants' neuropsychological testing protocol research directly benefitted the RIDDELL Defendants, which used the fruits of this research to make claims regarding their helmets' efficacy in mitigating against head trauma.

198. Upon information and belief, the MTBI Committee and Defendants NFL and NFL C sponsored the concussion-assessment tool now known as ImPACT, and owned by Dr. Joseph Maroon, Dr. Mark Lovell and Dr. Mickey Collins—all with MTBI Committee and Pittsburgh Steelers links.

199. As made clear in a technical paper at a biomechanics conference, this computerized neuropsychological testing battery **"was based upon the observation that the underlying basis for many of the frequently cited cognitive symptoms associated with mild diffuse brain injury (attention, memory and concentration issues) is actually an impairment in information processing."** In other words, Defendants, through the MTBI Committee, created and/or supported ImPACT Computerized

Neurocognitive Testing, which was literally designed with the assumption that reported symptoms were caused by comorbidities and not MTBI.

200. Around this same time in the 1990s, the MTBI Committee began—it claimed—monitoring MTBI data of the NFL’s clubs and publishing a number of technical papers presented at the International Research Council on the Biomechanics of Injury (“IRCOBI”).

201. The “IRCOBI Papers” were the fruits of early “MTBI Grant” money funneled from Defendants NFL, NFL P, NFL C, and RIDDELL either directly or through NFL Charities, NFL, or RIDDELL, and to a series of expert consultants, who were effectively pre-litigation defense-side expert witnesses:

- a. Exponent Failure Associates (Drs. Robert Fijan and Reid Miller);
- b. Biokinetics, Ltd. Canada (James Newman et al);
- c. The Southern Impact Research Center (P. David Halstead);
- d. Dr. Albert Burstein;
- e. Dr. Lawrence Thibault;
- f. Dr. David C. Viano;
- g. Dr. Albert Burstein;
- h. Dr. J.J. Crisco;
- i. Dr. Barry Myers;
- j. Dr. Eric Zemper;
- k. Dr. John Powell;
- l. Alleghany University;
- m. Simbex (New Hampshire);
- n. Wayne State University’s Biomechanics Lab; and
- o. Dr. James McElhaney.

202. One of these early principal IRCOBİ papers sponsored by the MTBI Committee validated the RIDDELL VSR-4 helmet over the rival Bike technology in order, upon information and belief, to validate the agreement between NFL/NFL P and RIDDELL which otherwise would have been fraudulent on its face.

203. The early IRCOBİ papers in the 1990s also studied mouth-guard research for concussion, concluding falsely that proper use of a mouth-guard could impact MTBI.

204. This work principally, with the MTBI Committee's financial backing, laid the groundwork to advance Defendants' bottom line, introduced the computerized neuropsychological testing protocol into the NFL, and published a series of otherwise (even more) highly suspect research in the peer-review journal *Neurosurgery* during the 2000s.

205. These papers validated the use of "Hybrid-III" testing dummies as the means to test concussions and forces to the head and neck in football players, which was on its face a questionable approach given that these dummies were stiff and unlife-like when compared to the human head/neck, which bent and torqued.

206. The early IRCOBİ papers also validated the "viscous criterion VC" injury model advanced by Dr. Viano in his research to justify the otherwise unjustifiable NOCSAE standards.

207. More early work was used to advance and/or validate neuropsychological testing protocol. This specifically included the computerized neuropsychological testing research done by Alleghany University, designed to create a "concussion severity index."

208. Involved in this work were Exponent Failure Analysis expert consultants Dr. Robert Fijan and Dr. Reid Miller as creators of the above-referenced neuropsychological testing protocol, which admittedly proceeded from the underlying premise that examinees had not

suffered diffuse brain injuries but instead simply had many of the frequent comorbidities associated with diffuse brain injuries: attention deficit, memory loss, concentration difficulties, and impaired information processing.

209. Upon information and belief, the Allegeny protocol involved only five teams and tested only one of five injured players; yet, it became the underlying basis for the scientific justification for ImPACT Concussion Assessment Tool, used to validate the RIDDELL Revolution Helmet and in multiple papers published in *Neurosurgery* by the MTBI Committee.

210. Defendants' collectively, and through the MTBI Committee, knowingly published papers in peer-reviewed journals and elsewhere, basing conclusions on factually unsupportable claims (based upon the data they had in certain instances manipulated/cherry-picked) in order to support self-serving conclusions.

211. It was Defendants' use of the MTBI Committee that led to the Biokinetics' and Southern Impact Research Center's research, neuropsychological testing research, and on-field impact recreations that further led to what would become the RIDDELL Revolution helmet system.

**Committee Chair Appointments Contrast the MTBI Conspirators' Stated  
Goal of Independent Scientific Research with their Actual Goal:  
Tort Liability Protection for the NFL**



*Center* “Independent” MTBI Committee’s Chairman Elliot Pellman, MD 1994-2007; *Left* New York Jets Owner Woody Johnson; *Right* New York Jets Director of Football Operations Bill Parcells

212. During his tenure as Chairman of the MTBI Committee, Dr. Elliot Pellman did the following:

Disclaimed, on behalf of *any* committee members, any “financial or business interest that poses a conflict” to the MTBI Committee’s research in *Neurosurgery* notwithstanding his (and others) numerous league ties and salaried positions such as NFL Medical Director / Jets Doctor / Chaired NFL Physician’s society, NFL Injury and Safety Panel, and a personal physician to Commissioner Tagliabue;

Oversaw commingling and/or misappropriation of grant money, funneling it ultimately to Defendant NFL Charities, also benefitting from Defendant RIDDELL’s money, as used on sham helmet-safety research between 1997-2000. The purpose of this was to develop a product for Defendant NFL and RIDDELL’s mutual commercial benefit after misrepresenting study results;

Represented, in a meeting on May of 2009, on CTE pathology and helmet safety, between MTBI Committee members, NFLPA medical and player representatives, NFL league officials and attorneys, experts, and scientists from BU, that “[t]he sponsorship of Riddell should have nothing to do with making decisions ... we want [Riddell] to help in terms of fitting, but we would prefer the data come [from elsewhere] ...” and that “we in fact do coach people how to speak in terms of liability, particularly when it comes to your history or history of concussions”;

Acknowledged, in *Neurosurgery* papers, the legal contributions to the MTBI Committee's work, including that of NFL general counsel Jeff Pash, and of Covington/former NFL counsel Dorothy C. Mitchell, who had "worked tirelessly to initiate the research ... her efforts paved the way for successful completion ...";

Ethical and competency questions include: wrongful death lawsuit; lying on his cv; and allegations he conspired with others to falsify data from studies;

Following Dr. Pellman's resignation, he remained on the Committee and new committee invitee Dr. Jeffrey Kutcher still thanked Dr. Pellman for his committee appointment in his written Congressional testimony on January 4, 2010.



IRA M. CASSON, MD  
Co-Chair 2007-10

DAVID VIANO, Med. PhD  
Co-Chair 2007-10

ELLIOT J. PELLMAN, MD  
Chairman 1994-07

213. In 2007, Dr. Casson and Dr. Viano replaced Dr. Pellman as co-chairs and remained co-chairs of the MTBI Committee until their forced resignation in 2010. During their tenure, Dr. Casson and Dr. Viano engaged in the following:

Dr. Casson and Dr. Viano were absent from any of the 2007 Congressional hearings as committee co-chairs;

Dr. Viano was credited as a Wayne State University professor in MTBI research while in fact a GM employee at the time he began doing work

for the MTBI Committee, and subsequently—according to sworn testimony—employed jointly by RIDDELL and the NFL as an “equipment safety specialist” pursuant to the RIDDELL/NFL P Agreement when chairing the MTBI Committee;

Dr. Viano’s deposition testimony reveals defense-side only expert income into eight figures;

Dr. Viano’s early papers reveal he has acknowledged repetitive head trauma causes CTE;

Dr. Casson has acknowledged the link between repetitive head trauma and CTE in boxing but (with others) challenged the finding of CTE in a football player in 2006;

Dr. Casson responded to allegations his committee excluded major data samples for controversial study conclusions by saying “[w]e came up with data that is the truth about what happens in the NFL.” Football Concussion Controversy Highlights Gaps In Research, Consensus, *Nervecenter: Annals of Neurology* at A15. May 2007 (noting the contrast between the published papers and the “emerging scientific consensus”);

Dr. Casson eventually did testify before Congress that “there is not enough valid, reliable, or objective scientific evidence at present to determine whether or not repeat head impacts in **professional football** result in long-term brain damage.”

214. Just as the Council For Tobacco Research was recognized as having done, the Defendants, particularly NFL and NFL C, used MTBI Committee grants to funnel money to a number of outside consultants it had heavily vetted for the purpose of providing favorable conclusions.

215. The MTBI Committee worked closely during early years with Dr. Lawrence Thibault, a notable biomechanics expert in Philadelphia who had opined that so-called “shaken-baby” syndrome did not actually exist; babies did not suffer from such repetitive-type injury, Dr. Thibault would argue, but instead would suffer from acute and specific blunt-force traumatic events.

216. The committee would also engage Dr. Cynthia Bir. Dr. Bir was a biomechanics expert who had significant experiences working in boxing, which the MTBI committee worked hard to distinguish from the sport of football.

217. Defendants NFL, NFL C and RIDDELL's MTBI Committee funneled significant money to R. David Halstead, a football-helmet tester who worked at his own lab in Tennessee (the Southern Impact Research Center or "SIRC") and at the University of Tennessee Knoxville Biomechanics Laboratory to validate and test helmets pursuant to NOCSAE standards. Halstead has no college degree and has lied on that point multiple times in federal-court depositions.

218. Defendants NFL, NFL C and RIDDELL's MTBI Committee spent significant dollars on General Motors expert witness and biomechanics expert Dr. Viano. Dr. Viano came up with many of the principal theories advanced by the committee: that football injuries are biomechanically different than boxing (where chronic brain injury was clinically proven); and that testing metrics and standards were valid.

219. Defendants NFL, NFL C and RIDDELL's MTBI Committee was a joint enterprise by Defendants and undertaken for the following purposes: a) to create a body of self-serving non-clinical science on MTBI and blows to the head; b) to provide a scientific basis for the underlying test metrics used in safety equipment design; c) to provide a scientific basis for the underlying test metrics used in safety equipment research; d) to provide non-clinical (e.g., scientific research) to interested parties making decisions with football players who could be accused of legally causing these players' chronic brain damage and/or latent brain disease(s); and e) to develop and validate a neuropsychological test battery which, in



conjunction with football players' purported subjective symptoms, could justify otherwise unjustifiable decisions by clinicians to clear such players to play football.

220. In the face of growing knowledge of the risks and dangers of latent brain disease caused by repetitive clinical and subclinical blows in the 1980s and 1990s, Defendants and others agreed to conceal, omit, and misrepresent material information from the general public about the link between repetitive head trauma and chronic brain damage.

221. Through this purportedly independent and un-conflicted (save for Dr. Mark Lovell's disclosed conflicts) Defendants NFL, NFL C and RIDDELL's MTBI Committee eventually worked with international corporations and even used federal government grant money in perpetrating a massive fraud, that included but was not limited to the following:

- a. Funneling "MTBI grant" money to reputed defense-expert firm Exponent Failure Analysis, Inc., which has argued that secondhand smoke does not cause cancer, to devise neuropsychological test protocol under Dr. Robert Fijan, PhD;
- b. Funneling several hundred thousand dollars per year through the NFL C and NFL to Dr. David C. Viano (and/or his corporations ProBiomechanics, LLC and/or The Institute for Injury Research), a professional defense-side crashworthiness expert who spent his entire career testifying for General Motors and other auto manufacturers in product liability lawsuits and has made millions of dollars doing it;
- c. On the one hand, authorizing disability payments in and before the 1990s for living football players diagnosed with chronic traumatic encephalopathy and brain damage, while at the same time, denying the existence of CTE in football players;
- d. Funneling "MTBI grant" money to NOCSAE to support self-serving research endeavors;
- e. Funneling money through Defendant NFL C to the fraudulent "MTBI committee" to Wayne State University professors and their expert-witness corporations (e.g., Albert I. King, Inc.) to support research favoring Defendant RIDDELL's helmet product as superior to its competitors;

- f. Publishing a total of 16 papers in the peer-reviewed journal *Neurosurgery* on “Concussion in Professional Football” premised on knowingly false data sets, which peer-reviewers and the *New York Times* and ESPN all debunked;
- g. Agreeing with Defendant RIDDELL to provide the safest possible football helmets and ones sufficiently safe to prevent injury, while knowing that none of these helmets warned or mitigated against CTE; and
- h. Attempting to create a self-serving “concussion severity index” in the 1990s and premising research on false data

222. Indeed, Defendants—all of whom assumed some form of financial responsibility relative to this undertaking—wrote that their published sham-science journal articles that made notoriously false conclusions on brain injury applied not merely to NFL players but also to teenagers and children; NFL Commissioner Roger Goodell testified to Congress that “[w]e recognize that our example extends to all young athletes who play football” and further bragged in support that they had shared and publicized the controversial, and later-discredited MTBI Committee research. The concealment and misrepresentations and omissions related to severe neurological risks of repetitive subclinical and clinical MTBI exposed players like Aaron Hernandez to dangers he could have avoided had the Defendants provided truthful and accurate information.

223. Through the years, the Defendants’ MTBI Committee made a series of unsupportable claims in their peer-reviewed papers in *Neurosurgery*, which took significant criticisms including, but not limited to, the fact that chronic effects of head-trauma exposures had not ever been observed in football players.

224. Former General Counsel Richard Lester's testimony in *Stringer v. NFL* suggests Dr. Viano may have even served in a joint-employment capacity by RIDDELL and NFL pursuant to the licensing (and conspiratorial) agreement between Defendants NFL and NFL P and RIDDELL, while *also* serving as the Chair of NFL's MTBI Committee; his testimony makes clear, regardless that this agreement provides for a joint employee of RIDDELL and NFL in this capacity.

225. Defendants used the NFL, NFL P, and RIDDELL's MTBI Committee to restrain the market-share of non-RIDDELL helmets, in particular, the Bike Pro Edition helmet, which NFLPA President Trace Armstrong had worked to develop as a technological advancement, out of the League. [www.bloomberg.com/news/articles/2013-03-18/helmets](http://www.bloomberg.com/news/articles/2013-03-18/helmets).

226. Defendants also used the NFL, NFL P, and RIDDELL's MTBI Committee to scuttle the use of the ProCap product (a soft outer shell for helmets intended to reduce MTBIs, later in time than the early research in the 1960s and 70s), reportedly without regard to its potential benefits. *Id.*

### **The MTBI Committee's Fraudulent Work**

227. Fundamentally, the MTBI Committee's published scientific conclusions (as referenced above) rested on (knowingly) incomplete underlying data and test-validation studies performed by paid-for experts.

228. Through MTBI Grant money from co-conspirator NFL Charities, Steelers/University of Pittsburgh Medical Center ("UPMC") Neuropsychologist Mark Lovell was tasked with developing the subsequent neuropsychological testing protocol. Upon information and belief, these tests were intended to serve as a supposed objective basis to justify team physicians' and coaches' otherwise inappropriate return to play decisions with respect to

concussed players. As long as the teams could match a player's lack of subjective complaints with testing data (which had alarmingly inaccurate false positive AND false negative rates), the club or team or college would then not be to blame for injuries suffered by the players.

229. The other major study occurring at this time by the conspirators was the Brain Injury Surveillance Study. Dr. Pellman ordered all 30 teams to keep accurate records of their concussed players each week, and to submit this data to Dr. John Powell's registry for logging. During a later presentation, then-Jets neuropsychologist William Barr made clear that a substantial portion of reported neuropsychological testing data sets had never been used (if not entirely discarded). Barr would be dismissed thereafter, for speaking out on this point.

230. The Brain Injury Surveillance study also relied upon *actually fraudulent* data on concussions. While the papers in *Neurosurgery*, in a very limited fashion, acknowledged a source of unintentional error deemed minimal, with respect to the non-reporting of undiagnosed concussion, in fact entire NFL teams had declined to submit data on concussions. Some of these omissions included the Dallas Cowboys, which omitted the highly publicized and nationally televised concussion of Troy Aikman. Indeed, literally hundreds of diagnosed concussions were excluded from the study, referenced in multiple papers in *Neurosurgery*.

231. The MTBI Committee failed to include hundreds of neuropsychological tests done on football players in the results of the Committee's studies on the effects of concussions and was selective in its use of injury reports.

232. For example, in a paper published in *Neurosurgery* in December 2004, Dr. Pellman and other MTBI Committee members reported on the baseline data for 655 players and the results for 95 players who had undergone both baseline testing and post-concussion testing. The authors concluded that football players did not show a decline in brain function after suffering concussions. Their analysis also found no ill effects among those who sustained three or more concussions or who sustained a concussion that prevented them from playing football for a week or more. The paper additionally excluded at least 850 baseline tests, but did not explain why.

233. Upon information and belief, Dr. Michael Apuzzo, then-editor of *Neurosurgery*, referred to the acknowledge NFL paper-series as good scientific work.

234. Less than a year after Dr. Burstein's testimony in *Arnold*, in 1996, the conspirators' purportedly independent committee agreed to jointly engage the services of the Canadian consulting firm, Biokinetics and Associates. Biokinetic Associates, Ltd., conducted research into helmet safety standards along with Defendant RIDDELL, which paid for the pendulum used in the testing.

235. This study, that NOCSAE denied was funded jointly by RIDDELL and the NFL charities, using MTBI grant money, was in fact funded by these entities, according to the internal work-product deliverables from the study itself.

236. The MTBI Committee studied and recreated videotaped concussive impacts from real football play at Biokinetics' lab, using a new pendulum technology and "Hybrid-3 dummies," which were reportedly innovations used to evaluate human tolerance to MTBI under a metric called "Head Impact Power" Index (HIP).

237. This began in 1995 and occurred in two parts within a five year period. The Hybrid-3 dummies have a particularly rigid and un-human-like neck; the dummies' necks are markedly stiffer (an important issue in evaluating head impacts), so Defendants performed research attempt to validate these dummies.

238. In part one of the study, Biokinetics, on behalf of and/or in concert with Defendants, evaluated how helmets responded to "potentially concussive" hits. As was known then by the conspirators, concussions occur through both linear-force injuries and also through rotational injuries. The proposed HIP metric provided a preliminary means through which to evaluate rotational injury.

239. Biokinetics reviewed video of approximately 100 concussive hits to determine which hits to study and attempt to reproduce them.

240. The lab then focused on reproducing 12 impacts for the test. 9 hits were concussive in nature.

241. Specifically, helmets were evaluated for concussion protection using NOCSAE metrics designed for death/skull fracture/brain bleed/paralysis injuries (TBI injuries). The metric that NOCSAE relied on for evaluation had been developed at Wayne State University in the context of automotive crashes and was called Severity Index ("SI").

242. In part one of the two-part study at Biokinetics, the SI metric was acknowledged as not being a concussion metric. Specifically, the authors wrote "the reader is reminded that the NOCSAE and ATSM failure criteria are intended to reflect serious head injury, rather than concussion." Withnall, C., *A New Performance Standard For Mild Traumatic Brain Injury (MTBI)*, Nov. 15, 2000, *RR00-22* Memorandum to RIDDELL, Inc. at 10 (Part One).

243. Part one concluded that “maximum power could remain a strong predictor of concussion even in the absence of complex rotational acceleration recordings.” Withnall, C., *A New Performance Standard For Mild Traumatic Brain Injury (MTBI)*, Nov. 15, 2000, RR00-22 Memorandum to RIDDELL, Inc. at 11 (Part One). Stated differently, the report concluded that being hit extremely hard head-on was a strong measure of concussion, even if there was not an adequate way to measure the sheering, angular –type injuries consistent with many football concussions.

244. In part two of the two-part study at Biokinetics, the helmets were knowingly tested under insufficient temperature conditions to properly evaluate energy attenuation of the helmet’s liner system. This was even acknowledged in the study. *See* Withnall, C., *A New Performance Standard For Mild Traumatic Brain Injury (MTBI)*, Nov. 15, 2000, RR00-23, Memorandum to RIDDELL, Inc. at 10 (Part Two).

245. The Biokinetics study also revealed concussive impact for helmets to be 95% likely at an SI value less than half (559) of the NOCSAE minimum for certification (1200); and concussive impact was still 50% likely at less than one quarter (291) of the NOCSAE minimum for certification (1200).

246. Yet, the Biokinetics memorandum did *not* conclude that the SI test was inappropriate as a metric for concussion, saying “maximum power could remain a strong predictor of concussion ...” Because rotational injuries were still not possible to entirely to test, the conspirators reached the self-serving conclusion that the old car-crash test (SI) metric might still be the best test. The SI metric was also the only test that could be empirically captured. Defendants’ testing contemplated a head impact power index, a

parameter combining linear and rotational acceleration, and measured that index on each hit with the help of tiny accelerometers inside the dummies' heads.

247. The HIP index still could not fully capture rotational injury, a fact acknowledged by the study's authors, and subsequently by Dr. David Viano and Dr. Elliott Pellman, among others.

248. In layman's terms, Dr. Viano and Dr. Pellman concluded the test was still effective to evaluate concussions based upon how fast and hard people collided, which meant that the old way of doing things (SI) was not obsolete, even where they acknowledged the possibilities of concussive traumas coming at far lesser impacts.

249. Part two of the study concluded, in layman's terms, that even though the new HIP metric was ineffective, insufficient, and subject to change, a helmet meeting this standard was better than a helmet not meeting this standard.

250. The study also acknowledged importantly, and accurately a conclusion properly imputed to the conspirators: NO HELMET CAN PREVENT A CONCUSSION.

251. The conspirators, along with NOCSAE, then engaged long-time RIDDELL expert witness P. David Halstead at the Southern Impact Research Center in Tennessee to perform additional research on helmet safety testing.

252. RIDDELL engineer Thad Ide left RIDDELL in the early to mid-1990s and worked briefly at the SIRC during the first two years that it was opened under its corporate name, beginning in 1995 when it was testing the helmets. He then left SIRC and returned to RIDDELL, whereupon he became a Senior VP of RIDDELL.



253. Halstead remained at SIRC claiming to conduct “research” and product testing, but in reality, operated the organization as a source of defense expert consulting for the NFL, NCAA, and protective-equipment manufacturers.

254. Halstead was and is, at all relative times, a career expert witness. Halstead has represented to have a masters and bachelors of science degree from SUNY, and to have taken post-graduate-level course work in biomechanics. In reality, Halstead’s post-secondary education consists almost entirely of online coursework from an unaccredited university. He has more recently conceded in deposition testimony and on his posted resume that he only possesses “non-traditional” education credentials.

255. During the time of the subject testing at SIRC, Halstead had not received all of this online education. He had, however, testified repeatedly as an expert witness for Defendant RIDDELL, which was sued related to catastrophic protective-equipment malfunctions. In each instance, Halstead testified that the helmet at issue (or occasionally other equipment) was not to blame.

256. In turn, Defendant NFL relies on NOCSAE certifications as its safety metric. Regardless of how poorly the NFL may rate a helmet’s technology, it will allow players to continue wearing the helmet, so long as NOCSAE certifies the helmet. From its inception in 1994, the MTBI Committee claimed to be conducting studies to determine the effects of concussions on the long-term health of NFL players. Instead of publishing truthful information about the MTBI crisis in the NFL, the MTBI committee spearheaded a disinformation campaign.

257. Chair Dr. Pellman, and eventual chairs Dr. Ira Casson, a neurologist, and Dr. David Viano, a biomechanical engineer, worked to discredit scientific studies linking head impacts and concussions to neuro-cognitive disorders and disabilities.

258. The MTBI Committee published its findings in a series of sixteen papers between 2003 and 2009. According to those papers, the MTBI Committee's findings supported a conclusion that there are no long-term negative health consequences associated with concussions or subclinical injuries sustained by NFL players. These findings contradicted decades of independent research and the experiences of neurologists and players.

259. The MTBI Committee concluded that it was appropriate for players who suffered a concussion to return to play in the same game or practice in which the concussion occurred. In 2004, the MTBI Committee claimed that its research found that players who suffered a concussion were not at greater risk of suffering future concussions. The Committee also claimed that such players did not have increased susceptibility in the seven-to-ten day window after suffering a concussion.

260. The MTBI Committee's papers and conclusions were against the weight of prevailing scientific evidence outside their studies, and based on biased data collection techniques. They received significant criticism in scientific media from independent doctors and researchers and were met with skepticism in peer review segments following each article's publication.

261. As another example, in 2005, the MTBI Committee stated that "[p]layers who are concussed and return to the same game have fewer initial signs and symptoms than those removed from play. Return to play does not involve a significant risk of a second injury either in the same game or during the season."

262. Yet, a 2003 NCAA study of 2,905 college football players found just the opposite. “Those who have suffered concussions are more susceptible to further head trauma for seven to 10 days after the injury”; a 2005 Report from North Carolina revealed a connection between repetitive head injury exposures and Alzheimer’s disease (frequently confused with CTE).

263. In 2002, following the Biokinetics study, RIDDELL released its Revolution helmet, purportedly manufactured and designed to “reduce the incidence of concussions.”

264. The Revolution helmet was born out of the *concept* that rotational injuries caused brain injury and warranted protection, but without tests capable of gauging rotational forces in a meaningful way, it has lacked sufficient proof that its design functioned to perform in this manner.

265. Nevertheless, Defendant RIDDELL claimed that its Revolution helmet could reduce the incidence of concussion by 31%, which fueled sales of the helmet model. Its media campaign surrounding the rollout of this “first of its kind” helmet included a video news release that created “over 60 million media impressions, nearly 150 television placements, over 100 newspaper clips, over 250 on-line placements and 6 live sports radio interviews.”

266. In fact, the Revolution contains the same vinyl nitrate front liner system as Defendant RIDDELL’s antiquated VSR-4 series helmet.

267. Materials such as thermoplastic polyurethane (“TPU”) have been shown to help reduce head impact acceleration by absorbing energy more effectively throughout a wider range of temperatures thus reducing force on the brain.

268. Defendants knew or should have known that materials such as thermoplastic polyurethane (“TPU”) are better at absorbing energy throughout a wider range of

temperatures and provide better protection against head impacts when used throughout liner systems of football helmets.

269. Defendant RIDDELL has continued to utilize substandard liner materials such as vinyl nitrile foam that are less effective at reducing head impact acceleration by absorbing energy. Vinyl nitrile foam padding used in Defendants' helmets degrades over time and provides less protection against lower-level impacts that result in concussions.

270. The Cleveland Clinic found that modern football helmets are no better at protecting against concussions than vintage "leatherhead" football helmets. *See Vintage Leatherhead Football Helmets Often as Protective As Modern Helmets In Common Game-like Hits Cleveland Clinic Researchers Find*, Cleveland Clinic, November 4, 2011, <http://my.clevelandclinic.org/about-cleveland-clinic/newsroom/releases-videos-newsletters/2011-11-04-vintage-leatherhead-football-helmets-often-as-protective-as-modern-helmets-in-common-game-like-hits> (last visited March 11, 2016).

271. Defendants knew, have known, and/or should have known that helmets are effective in eliminating skull fractures and reducing linear forces, but they are ineffective in reducing the rotational forces that result in MTBI and/or subclinical MTBI and/or diffuse brain injury.

272. Nevertheless, in 2002, Defendant RIDDELL released the Revolution helmet, a helmet specifically designed to "reduce the incidence of concussions" and developed as a consequence of the MTBI Committee's work.

### **Defendants' Sham Marketing of the Equipment and of Football to the General Public**

273. RIDDELL marketed its new helmet as “a first-of-its-kind helmet”; even naming it the Revolution. Defendants NFL and NFL P allowed, encouraged, purveyed, and promoted the false marketing of these products to football players at every level over its possession and control.

274. Upon information and belief, with knowledge that the RIDDELL Revolution was being marketed in scientifically unsupportable fashion, Defendants NFL and NFL P encouraged reliance on these representations by the general football-playing public, including Hernandez, who—when playing for the Florida Gators—first was told and made to understand that the Revolution reduced concussions.

275. In its 2003 fact-sheet on the RIDDELL website, RIDDELL represented its Revolution helmet to have been born out of research from “an independent engineering consulting firm in Canada ...” and being the first helmet ever designed with the intent of reducing MTBI occurrence.

276. Eventually, following this scandal’s unfolding, Defendant RIDDELL placed a warning on its Revolution line about *concussion*, but about none of the intertwined risks alleged in this Complaint: it made no mention of repetitive exposure to subclinical traumas, latent disease, nor CTE; and, despite knowledge that the overwhelming number of concussive blows in football come from rotational force, Defendant RIDDELL’s misleading warning suggested merely that contact in football “may” result in concussion and “brain injury”, without specifying the nature of such injury. It makes no reference to CTE or chronic brain damage.

277. Following the release of the Revolution helmet, RIDDELL funded research at UPMC to study the new helmet with ImPACT proprietors and NFL club Drs. Michael “Mickey” Collins, Mark Lovell, and Joe Maroon (in their capacities as ImPACT proprietors only.)

278. The UPMC/RIDDELL study compared new Revolution helmets to old, refurbished, VSR-4 helmets—the oldest performing technology on the marketplace.

279. In this limited context, RIDDELL’s Revolution eked out a victory in performance by approximately 2%: 7.6% to 5.3%, a statistically insignificant difference of 2.3%.

280. Further, this 2.3%’s evaluation metric was eviscerated: studies revealed the neuropsychological evaluation examination device (ImPACT) used to test the Revolution helmets produce 20% to 40% false negative AND positive rates according to peer-reviewed testing.

281. In fact, even Dr. Maroon, himself an MTBI Committee members, upon information and belief, raised internal concerns over his hospital’s ability to make these claims with ImPACT for RIDDELL.

282. In other words, baseline testing and/or follow up exams could have been and likely were wrong, making the results of this study entirely useless to show a 2.3% relative difference between *old and un-reconditioned helmets* when compared with new Revolution helmets.

283. Mickey Collins later agreed that the study had serious problems and that RIDDELL was shopping for research that would support its claim that the Revolution reduced concussions:

I needed money to fund my salary,” he said. “I was going to get my ass fired, you know? So I’m looking for any kind of funding to do this research ... I’m not an idiot; **I know Riddell wanted the results to look good, okay? I mean obviously. I**

**understand that** ... there were serious flaws with the study, okay? I understand that. Fainaru-Wada, M. and Fanairu, S., *League of Denial*, Three Rivers Press (2014).

284. Based on the 2003 UPMC study funded by RIDDELL, RIDDELL marketed the Revolution helmet in 2006 as reducing concussions by 31%—a figure criticized as an exaggeration by leading experts on head injuries.

285. Upon information and belief, UPMC attempted to make multiple, material changes to RIDDELL's media releases regarding the 31% claim, and the claim that the Revolution provided better protection against concussions, prior to the press release's dissemination.

286. Specifically, even some of the actual authors of the study took issue with how RIDDELL was characterizing the findings.

287. By focusing solely on the larger number, which referred to a relative decrease in risk, this exaggerated any benefits of the types of products eventually worn by players wearing these helmets.

288. Dr. Robert Cantu, a neurosurgeon and leader in the field of sports-related concussion research, wrote a comment published in *Journal of Neurosurgery* that the study contained a "serious, if not fatal methodological flaw." The study was flawed because it discounted low impact hits and in turn proved that the Revolution did not reduce the risk of concussions.

289. Upon information and belief, the RIDDELL and NFL P Defendants have knowingly failed to utilize the safest materials available in the construction of football helmets, which has resulted in an increased risk of brain injury in football players. In fact, RIDDELL has marketed the Revolution helmet—until 2013 the NFL's official helmet—as a panacea when it contains the same defective liner system as its VSR-4 series predecessor.

290. In fact, RIDDELL and NFL P have consistently marketed their helmets as having “concussion reduction technology” thus promoting a false sense of security to helmet users and the public. RIDDELL has continued to utilize substandard liner materials and padding that are less effective at and reducing head impact acceleration by absorbing energy and despite their superior knowledge about the risks associated with concussions and repetitive head impacts.

291. Dr. Robert Cantu observed that the small sample size and voluntary participation in the MTBI study discussed by Dr. Pellman and Dr. Viano suggested bias in the study design. As a result, he concluded, no conclusions should be drawn from the study.

292. Overall, the MTBI Committee’s work received overwhelming criticisms as being industry-driven and self-serving.

293. A different scientist who reviewed the MTBI Committee’s work stated that the NFL’s primary goal appeared to be preparing a defense for when injured players eventually sued, and that the league seemed to be promoting a flawed scientific study to justify its conclusion that concussions do not have adverse effects on players.

294. Dr. Kevin Guskiewicz, referring to the MTBI Committee, has stated that the “data that hasn’t shown up makes their work questionable industry-funded research.”

295. The NFL and the MTBI Committee, in addition to promoting false and misleading information, sought to discredit and deny the findings of other researchers confirming the link between football head injuries and long-term brain damage.

296. Dr. Pellman fired Dr. William Barr, a neuropsychologist who served on the MTBI Committee as a consultant, after Barr presented NCAA study findings that called into question certain NFL practices.



297. Between 2002 and 2007, Dr. Bennet Omalu examined the brain tissue of deceased NFL players, including Mike Webster, Terry Long, Andre Waters, and Justin Strzelczyk. All of these individuals suffered multiple concussions during their NFL careers. Later in life, each exhibited symptoms of deteriorated cognitive functions, paranoia, panic attacks, and depression. Dr. Omalu concluded that the players had suffered from CTE. In July 2005, nearly three years after he first saw the body of former Pittsburgh Steelers center Mike Webster, Dr. Omalu's paper about Webster's brain was finally published in *Neurosurgery*. After Dr. Omalu's findings were first published in *Neurosurgery*, the MTBI Committee wrote a letter to the editor of the publication asking that Dr. Omalu's article be retracted.

298. In November 2003, Dr. Guskiewicz was scheduled to appear on HBO's "Inside the NFL" to discuss his research. Dr. Pellman called Dr. Guskiewicz in advance and questioned whether it was in the best interest of Dr. Guskiewicz to appear on the program. On the program, Dr. Pellman stated unequivocally that he did not believe the results of Dr. Guskiewicz.

299. In 2005, Guskiewicz performed the previously-referenced clinical follow-up study of more than 2,550 former NFL players, and found that retired players who sustained three or more concussions in the NFL had a five-fold prevalence of mild cognitive impairment in comparison to NFL retirees without a history of concussions.

300. The MTBI Committee attacked the study.

301. In August 2007, the NFL issued a concussion pamphlet received by numerous members of the general public and drafted by Dr. Viano—a non-medical doctor—stating only that efforts are currently underway to determine if there are any long-term effects of MTBI.

302. Commissioner Goodell also stated: “[b]ecause of the unique and complex nature of the brain, our goal is to continue to have concussions managed conservatively by outstanding medical personnel in a way that clearly emphasizes player safety over competitive concerns.”

303. In 2005, the MTBI Committee published a paper that stated “[p]layers who are concussed and return to the same game have fewer initial signs and symptoms than those removed from play. Return to play does not involve a significant risk of a second injury either in the same game or during the season.”

304. Facing media scrutiny over the MTBI Committee’s questionable studies, Dr. Pellman resigned as the head of the Committee in February 2007. He nevertheless remained the NFL’s Medical Director, merely replaced as head by Dr. Ira Casson and Dr. David Viano, but remained a member of the Committee.

305. Dr. Guskiewicz said at the time that Dr. Pellman was “the wrong person to chair the committee from a scientific perspective and the right person from the league’s perspective.”

306. Regarding Dr. Pellman’s work, Dr. Guskiewicz stated, “[w]e found this at the high school level, the college level and the professional level, that once you had a concussion or two you are at increased risk for future concussions,” but “[Dr. Pellman] continued to say on the record that’s not what they find and there’s no truth to it.”

307. Dr. Casson and Dr. Viano continued to dismiss outside studies and overwhelming evidence linking dementia and other cognitive decline to brain injuries. In 2007, in a televised interview on HBO’s Real Sports, Dr. Casson unequivocally stated that there was

no link between concussions and depression, dementia, Alzheimer's disease, or "anything like [that] whatsoever."

308. In June 2007, the NFL convened a concussion summit for team doctors and trainers. Independent scientists, including Drs. Cantu and Guskiewicz, presented their research to the NFL.

309. Dr. Julian Bailes, a neurosurgeon from West Virginia University, briefed the MTBI Committee on the findings of Dr. Omalu and other independent studies linking multiple head injuries with cognitive decline. Dr. Bailes recalled that the MTBI's Committee's reaction to his presentation was adversarial: "The Committee got mad . . . we got into it. And I'm thinking, 'This is a . . . disease in America's most popular sport and how are its leaders responding? Alienate the scientist who found it? Refuse to accept the science coming from him?'"

310. At the summit, Dr. Casson told team doctors and trainers that CTE had never been scientifically documented in football players.

311. In 2008, Boston University's Dr. Ann McKee found CTE in the brains of two more deceased football players, John Grimsley and Tom McHale. Dr. McKee stated, "the easiest way to decrease the incidence of CTE [in contact sport athletes] is to decrease the number of concussions." Dr. McKee further noted that "[t]here is overwhelming evidence that [CTE] is the result of repeated sublethal brain trauma."

312. A MTBI Committee representative characterized each study as an "isolated incident" from which no conclusion could be drawn, and said he would wait to comment further until Dr. McKee's research was published in a peer-reviewed journal. When Dr. McKee's research was published in 2009, Dr. Casson asserted that "there is not enough valid, reliable or

objective scientific evidence at present to determine whether . . . repeat head impacts in professional football result in long[-]term brain damage.”

313. Defendants NFL and RIDDELL have—at least annually—also met with NCAA subcommittees advancing causes related to brain injury, and have exchanged medical research.

314. In this way, whether with respect to youth football, college football, or football played anywhere else by a member of the general public, much like a pharmaceutical company influencing its generic manufacturers, Defendant NFL has exerted its control over scientific research on football’s link to CTE and related matters.

315. Defendant NFL and/or NFL C, which commissioned the Michigan study on an older subset of the general public which had played football, responded to these results by claiming that the study was incomplete, and that further findings would be needed. NFL spokesperson Greg Aiello stated that the study was subject to shortcomings and did not formally diagnose dementia. Dr. Casson implied that the Michigan study was inconclusive and stated that further work was required. Other experts in the field found the NFL’s reaction to be “bizarre,” noting that “they paid for the study, yet they tried to distance themselves from it.”

316. In 2010, Dr. Casson testified and denied the validity of independent studies and stated that “[t]here is not enough valid, reliable or objective scientific evidence at present to determine whether or not repeat head impacts” lead to CTE in football players.

317. The members of the MTBI Committee knew differently. Dr. Casson testified that he was “the lead author of a landmark paper on brain damage in modern boxers” published in the Journal of the American Medical Association in 1984. That paper studied eighteen

former and active boxers and found evidence of brain damage in 87% of them. Clausen H, McCrory P, Anderson V, The risk of chronic traumatic brain injury in professional boxing: change in exposure variables over the past century, *British Journal of Sports Medicine* 2005;39:661-664.

318. In that same vein, Dr. Casson's written statement to Congress said that he had "been concerned about the possibility of long term effects on the brain related to football for close to three years."

319. Under its new leadership, Defendant NFL re-named the MTBI Committee the "Head Neck and Spine Committee," but the new committee is no different than the old one. Although it initially conceded that data collected by previous leadership was "infected", it has cited to this data in later papers; Dr. Pellman remained on this committee for extended time; and the HNS Committee has actively sought to block government funding for Boston University's CTE research; it has loaded up its roster *primarily albeit not exclusively* with neurosurgeon-researchers, who deny the clinical effects of CTE.

320. Ultimately, in March of 2014, Defendant RIDDELL agreed to stop making its claim that its helmets reduced concussions by 31% after the Federal Trade Commission's division of advertising practices determined "significant limitations" in its study.

321. Indeed, a substantial portion of this liability-limiting conspiracy has entailed shifting blame from those entities with superior knowledge and control —namely the conspirators—onto football's employees/end-users, and creating public opinion and science that would support personal-choice and/or causation defenses in the guise of good-faith research.

322. As NFL General Counsel Jeff Pash stated on Christmas of 2009, following the release of updated helmet memorandum, “the Commissioner believes if *players* are given the proper information, *they* can make good choices about their equipment and safety.” By way of example, many conclusions of the MTBI Committee’s research have, including but not limited to the jointly-sponsored helmet research, focused repeatedly on artificial distinctions between *NFL* football play as compared with *pre-NFL* football play, or versus youth-football play, when the scientists themselves and their peer-reviewers have known that such distinctions’ only worth lie in tort-liability defense.

323. Not coincidentally, the Defendants have attempted to establish exactly this sort of ‘science’, using the research of the MTBI Committee. The committee posed as a scientific research organization when in fact it was not; the RIDDELL/NFL conspiracy sought to redevelop litigation science on legal causation by drawing a distinction between NFL-football- play and head-trauma suffered in youth-football and/or high school or college football to defend itself. They began collecting data for a study to prove exactly such a conclusion during the time- period when Plaintiff played football, instead of providing him with truthful information about repetitive head trauma. The result of this fraudulent research was the February 16, 2016 paper from Dr. Casson, Dr. Viano and Dr. Lovell referenced *infra*. See Solomon, Kuhn, Zuckerman, Casson, Viano, Lovell, Sills, *Participation in Pre-High School Football and Neurological, Neuroradiological, and Neuropsychological Findings in Later Life: A Study of 45 Retired National Football League Players*, 44 Am. J. Sports. Med. 3 (Mar. 2016).

324. Dr. Pellman in earlier words echoed these sentiments, quoted in the Winter 1997 edition of the co- conspirator Pro Football Athletic Trainer’s Society’s quarterly trade

publication, distinguishing his MTBI Committee as independent in nature by claiming that “**athletic trainers** are the most important link in head injury treatment.”

325. In this same article Dr. Pellman states: “[w]e are in the process of setting safety standards the NFL can look to when a mild traumatic brain injury occurs.” Indeed, this would not occur for 10 years. Moreover, in making this concession, Dr. Pellman attempted to distribute responsibility onto others: “players, coaches, athletic trainers and physicians should all be able to recognize an [MTBI], know what the correct safety standards are and be able to determine at what point a player should return to the field after sustaining mild brain trauma. The standard doesn’t exist in the medical community right now, and we in the NFL are attempting to set the standard.” He said, nearly a decade after an international return-to-play protocol had been established by the global medical community, and two to three years after the MTBI Committee’s consensus on its own working definition for a concussion: “traumatically induced alteration of brain function.” Notably, the American Association of Neurosurgeons’ definition captures alteration of brain function “resulting from mechanical force or trauma.”

326. Notwithstanding the NFL’s actual/constructive knowledge of the link between exposures to head-trauma and long-term neurological disease/illness, at *all* times material to the Complaint, with respect to its injury database, the NFL knowingly permitted the alleged systemic failures by its member-clubs with respect to providing the data for this database.

327. The NFL has underreported and/or misreported head injuries, and/or mis-categorized head-injuries as other injuries (chest/neck/shoulder/muscular/unspecified) in order to manipulate its own data. This custom and practice has existed, upon information

and belief, for the duration of this injury database, purportedly created to solve these sorts of problems, but in fact used to paint skewed statistical pictures favorable to the conspirators.

328. The MTBI Committee failed to include hundreds of neuropsychological tests done on NFL players in the results of the Committee's studies on the effects of concussions and was selective in its use of injury reports.

329. The conspirators continue to: attempt to advance and fund psuedo-scientific studies geared to limit liability.

330. In 2013, the NFL Defendants supposedly ended their partnership with RIDDELL as the official helmet of pro football. While the NFL's sources leaked news that it needed "quite a bit of leverage" to get itself out of the RIDDELL deal early, almost concurrently with the end of this deal, USA Football and RIDDELL agreed to a near-identical deal.

331. USA Football is a supposedly independent body from the NFL, however, its founding Board of Directors consisted of the NFL's Commissioner of Football, the NFLPA's Executive Director, NFL Government Relations Director Joe Browne, and NFLPA attorney Douglas Allen. And upon information and belief, a substantial portion of funding for USA Football is driven by the conspirators.

332. Indeed, as Defendants have believed for decades, developing early interest in football leads to more fans and to more adult season-ticket holders, which is critical for brand-survival and for long-term profits.

333. Defendant NFL P instituted entire marketing campaigns around this premise, specifically trying to: "make soccer moms the coaches of tackle football" and to promote



“heads up” tackle football even with the knowledge that such a style of football makes absolutely no difference whatsoever when it comes to preventing injury.

334. Specifically, by 1996, Defendants NFL and NFL P began and/or furthered marketing campaigns titled “Play football”, “Get in the Game”, and “Pledge allegiance.”

335. Overseen at the highest level by NFL President Neil Austrian—who had worked with Phillip Morris since at least the early 1980s— and implemented by NFL P Vice President Don Garber, the “Play football” campaign was a youth marketing effort, geared toward getting children ages 6-11 (exactly Aaron’s age range at the time) playing football. Mothers were also a focus of this campaign, as Defendants NFL and NFL P believed that mothers needed to rely on the representations that football itself was safe. Defendants NFL and NFL P believed that by succeeding in this campaign (e.g. creating young football players) they would increase lifelong fandom.

336. Defendant NFL and NFL P’s “Play football” campaign did not contain any warnings. Indeed never mentioned risks such as CTE and/or repetitive subclinical traumas because it entirely failed to mention *any* risks in football play, acute or long-term in nature.

### **Aaron Hernandez Experienced Repeated Head Trauma While Playing Football**

337. Aaron Hernandez began playing contact football in approximately 1995, when he was between 5 and 6 years old. Aaron played youth football in Connecticut, in middle school, in high school, as a collegiate athlete at the University of Florida, and as a professional athlete in the NFL. In total, he played for approximately 19 years.

338. Aaron wore RIDDELL-branded helmets throughout his amateur and professional football career, recognizing the RIDDELL brand as the same equipment that protected elite football players.

339. During his amateur and professional football career, Aaron experienced repeated traumatic head impacts, including subclinical and clinical blows, with greater frequency and severity than the general population of men of a similar age. Aaron relied on the representations made by Defendants regarding his equipment to protect him from these risks.

340. The repeated head impact injuries experienced by Aaron, including the subclinical and clinical blows, are known to greatly increase the risk of developing the neurodegenerative disorder CTE.

341. On April 19, 2017, Aaron committed suicide while in the custody of the Massachusetts Department of Correction. Boston University's School of Medicine posthumously examined Aaron's brain and neurological matter. On August 17, 2017, the School of Medicine issued a Neuropathology Report diagnosing Aaron with Stage III CTE at the time of his death.

342. CTE progresses through four (4) worsening stages of brain degeneracy. According to the CTE Society, individuals suffering from CTE in Stage III, like Aaron, typically experience symptoms such as memory loss, executive dysfunction, aggression, explosive behavior, loss of concentration, mood swings, depression, apathy, and cognitive impairment.

343. The Boston University Neuropathy Report also notes that Aaron's CTE pathology was unusually severe considering his young age.

344. Aaron's emotional and cognitive pain and suffering was proximately caused by Defendants (sadly successful) conspiracy and concealment-fraud.

#### **LOSS OF PARENTAL CONSORTIUM CAUSES OF ACTION**

345. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

346. The Commonwealth of Massachusetts recognizes loss of consortium to include the injury experienced when a child is deprived of the society and companionship of a parent as a result of tortious conduct.

347. Plaintiff is the proper party to bring such a claim because Avielle is the daughter of Aaron Hernandez, and Aveille was born on November 6, 2012, during Aaron professional football career.

348. Plaintiff's Complaint alleges the following tortious conduct by Defendants:

#### **TORT I – CIVIL CONSPIRACY (ALL DEFENDANTS)**

- a. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.
- b. Since at least the time of the RIDDELL -NFL P licensing deal (upon information and belief April of 1988), if not before, the NFL, NFL P, NFL C, and the RIDDELL Defendants, agreed to conceal material facts regarding repetitive exposures to subclinical and clinical MTBI.
- c. Defendants NFL, NFL C, NFL P, and RIDDELL, each took steps in advancement of their agreement to conceal, through funding of MTBI Committee sham research, including such research aimed at development of the RIDDELL Revolution Helmet.

- d. Defendants' concealment caused Aaron to become exposed to repetitive subclinical and clinical blows to the head (or MTBI), which proximately caused Aaron's CTE.
- e. Aaron experienced a chaotic and horrendous existence in many respects, due to his undiagnosed brain injury.
- f. Aaron would have made different decisions regarding exposures to repetitive subclinical and clinical MTBI had he been provided truthful information.
- g. As a result of Defendant's conduct, Aaron suffered damages that prevented him from rendering love, affection, society, and companionship to his daughter Avielle.

TORT II – FRAUDULENT CONCEALMENT (ALL DEFENDANTS)

- a. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.
- b. Defendants NFL, NFL C, NFL P, and RIDDELL, each had superior knowledge of football's cognitive and behavioral risks, even undertaking to provide knowingly conflated warnings on *concussion* that omitted reference to CTE and subclinical MTBI.
- c. Defendants concealed the information intentionally from Aaron and from his family.

- d. Aaron would have made different decisions regarding exposures to repetitive subclinical and clinical MTBI, had he been provided truthful information.
- e. As a result of Defendant's conduct, Aaron suffered damages that prevented him from rendering love, affection, society, and companionship to his daughter Avielle.

TORT III – NEGLIGENCE – VOLUNTARY UNDERTAKING  
(ALL DEFENDANTS)

- a. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.
- b. Pursuant to Plaintiffs' "negligence summary tables" and allegations detailed herein Defendants undertook, as stated in the second published paper in *Neurosurgery*, to "scientifically investigate concussions" and to "reduce injury risks in **football**," notably not just NFL football, and with "neither the authority nor the inclination to impose outside medical decision-making on the medical staffs of the individual teams."
- c. Thus, Defendants voluntarily assumed each and every duty of care to all members of society, including Aaron and his family for the entirety of Aaron's lifetime.
- d. Defendants breached this duty specifically by: propagating false science in light of their undertaking and affirmative representations to endeavor truthfully and in good-faith; funneling money to related

corporations under the guise of such moneys constituting charitable donations; and fundamentally by failing to actually seek to reduce injury risks in football through good-faith science.

- e. Defendants' breach caused Aaron to become exposed to repetitive subclinical and clinical blows to the head (or MTBI), which proximately caused Aaron's CTE.
- f. Aaron himself experienced a chaotic and horrendous existence in many respects, due to his undiagnosed brain injury.
- g. As a result of Defendant's conduct, Aaron suffered damages that prevented him from rendering love, affection, society, and companionship to his daughter Avielle.

#### TORT IV – NEGLIGENCE – LICENSING (NFL, NFL P, RIDDELL)

- a. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.
- b. As the licensing arm of the NFL, Defendant NFL P had a duty to ensure that the equipment and materials it licensed and approved was of the highest possible quality and sufficient to protect Aaron from the risk of injury, including, but not limited to, the unnecessarily increased of traumatic brain injuries including risk from CTE and/or clinical/subclinical MTBI.
- c. Defendant RIDDELL also had a duty to ensure that the equipment and materials they manufactured and had licensed was of the highest

possible quality and sufficient to protect Aaron from the risk of injury, including, but not limited to, the unnecessarily increased risk of brain injuries including risk from CTE and/or clinical/subclinical MTBI.

- d. Defendants NFL P and RIDDELL breached these duties by licensing defective RIDDELL helmets for use while knowing or having reason to know that these products were negligently and defectively designed and manufactured.
- e. Defendants NFL P and RIDDELL knew or had reason to know that these products not only did not protect Aaron from MTBI or minimize the risk of such harm, but actually increased that risk and contributed to such harm.
- f. Defendants' breach caused Aaron to become exposed to repetitive subclinical and clinical blows to the head (or MTBI), which proximately caused Aaron's CTE.
- g. Aaron himself experienced a chaotic and horrendous existence in many respects, due to his undiagnosed brain injury.
- h. As a result of Defendant's conduct, Aaron suffered damages that prevented him from rendering love, affection, society, and companionship to his daughter Avielle.

TORT V – NEGLIGENT HIRING /RETENTION  
/SUPERVISION (NFL, RIDDELL)

- a. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

- b. Defendants NFL and RIDDELL hired, retained, and supervised Dr. David Viano, individually and/or by and through ProBiomechanics, LLC and/or the Institute for Injury Research to provide non-clinical expertise and/or research, in the name of aiding the entire football community (evidenced by the application said research to children as alleged above).
- c. Defendants failed to properly vet Dr. Viano, who acted as a paid expert witness, despite presenting findings to the scientific community.
- d. Defendants' negligence in this regard resulted in a body of falsified and industry-funded research that purposefully and/or negligently contested and suppressed valid and truthful bio-medical science. The NFL's negligence allowed the MTBI Committee to use falsified industry-funded research to mislead the medical community and the general public on the risks associated with repetitive head impacts.
- e. As a result of Defendants' negligence, Aaron was exposed to repetitive subclinical and clinical blows to the head (or MTBI), which proximately caused Aaron's CTE.
- f. Aaron himself experienced a chaotic and horrendous existence in many respects, due to his undiagnosed brain injury.
- g. As a result of Defendant's conduct, Aaron suffered damages that prevented him from rendering love, affection, society, and companionship to his daughter Avielle.



#### TORT VI – FAILURE TO WARN (RIDDELL)

- a. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.
- b. RIDDELL possessed actual knowledge—including concerns by UPMC—that it was overstating its claims regarding Revolution helmets.
- c. RIDDELL's on-helmet warnings—worn by Aaron throughout his career—never once (to this day) addressed CTE, suicidality, subclinical MTBI, or latent disease-risk.
- d. Nor did RIDDELL provide information on relative risk, due to its NOCSAE participation and agreement not to do so.
- e. Nor did RIDDELL disclose the fact that its Revolution attenuated shock identically to its older models.
- f. As a result of RIDDELL's failure to warn, Aaron was exposed to repetitive subclinical and clinical blows to the head (or MTBI), which proximately caused Aaron's CTE.
- g. Aaron himself experienced a chaotic and horrendous existence in many respects, due to his undiagnosed brain injury.
- h. As a result of RIDDELL's conduct, Aaron suffered damages that prevented him from rendering love, affection, society, and companionship to his daughter Avielle.

349. The conduct alleged above in TORTS I-VI is the proximate cause of Aaron developing an advanced stage of the degenerative neurological disorder CTE.

350. Aaron did in fact develop the degenerative neurological disorder CTE.

351. As a result of Defendants' conduct and the injury experienced by Aaron, Avielle Hernandez was deprived of the love, affection, society, and companionship of her father while he was alive.

WHEREFORE, Plaintiff requests the following relief:

1. Judgment against Defendants;
2. Compensatory damages;
3. Punitive damages;
6. Attorney's fees and costs;
7. Interest; and
8. Such other relief as may be just and appropriate.

**PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS SO TRIABLE.**

Respectfully Submitted,  
AVIELLE HERNANDEZ, by her Guardian,  
SHAYANNA JENKINS HERNANDEZ  
By her Attorney,

Date: October 16, 2017

  
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